



REQUEST FOR PROPOSALS

SUPPLY OF A FLEET MANAGEMENT

INFORMATION SYSTEM

RFP No. PS20161295

Issue Date: August 3, 2016

Issued by: City of Vancouver (the "City")

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PART A - INFORMATION AND INSTRUCTIONS

PART A - INFORMATION AND INSTRUCTIONS

1.0 THE RFP

- 1.1 This Request for Proposals (the “RFP”) provides an opportunity to submit proposals for review by the City and, depending on the City’s evaluation of proposals, among other factors, to potentially negotiate with the City to enter into a contract. **EXCEPT WHERE EXPRESSLY STATED OTHERWISE IN APPENDIX 1 TO PART C OF THE RFP: (I) NO PART OF THE RFP CONSISTS OF AN OFFER BY THE CITY TO ENTER INTO ANY CONTRACTUAL RELATIONSHIP; AND (II) NO PART OF THE RFP IS LEGALLY BINDING ON THE CITY.**
- 1.2 The RFP concerns the City’s interest in procuring a Fleet Management Information System solution to effectively manage fleet assets and equipment services group activities. Details of the City’s objectives and requirements to which the RFP relates are set out in Part B of the RFP. The City welcomes proposals that are responsive to this RFP (“Proposals”) respecting innovative or novel approaches to the City’s objectives and requirements.
- 1.3 The City is interested in selecting an entity, which is not, by the terms hereof, barred from submitting a Proposal, and which does submit a Proposal (each such entity, a “Proponent”) with the capability and experience to efficiently and cost-effectively meet the objectives and requirements described in the RFP. The City currently expects to select such a Proponent and then enter into negotiations with that Proponent, which will conclude in the execution of a contract between the Proponent and the City (such a contract, an “Agreement”). However, the City may: (i) decline to select any Proponent; (ii) decline to enter into any Agreement; (iii) select multiple Proponents for negotiation; or (iv) enter into one or more agreements respecting the subject matter of the RFP with one or more Proponents or other entities at any time. The City may also terminate the RFP at any time.
- 1.4 The City currently intends that Proposals will be evaluated by the City in relation to their overall value, which will be assessed in the City’s sole and absolute discretion. In assessing value, the City expects to consider the factors described in Section 8 below, among others.
- 1.5 **NO BID SECURITY IS REQUIRED FROM PROPONENTS IN CONNECTION WITH THE SUBMISSION OF PROPOSALS BECAUSE NO PROPOSAL WILL BE DEEMED TO BE AN IRREVOCABLE OR OTHERWISE BINDING LEGAL OFFER BY A PROPONENT TO THE CITY. THE LEGAL OBLIGATIONS OF A PROPONENT THAT WILL ARISE UPON THE SUBMISSION OF ITS PROPOSAL WILL BE LIMITED TO THE TERMS AND CONDITIONS STATED UNDER THE HEADING “LEGAL TERMS & CONDITIONS” IN APPENDIX 1 TO THE FORM OF PROPOSAL.**
- 1.6 The execution of an Agreement may be contingent on funding being approved, and the relevant Proposal being approved, by the Vancouver City Council.
- 1.7 The RFP consists of four parts, plus appendices:
- (a) **PART A - INFORMATION AND INSTRUCTIONS:** This part is intended to serve as a guide to the RFP process for Proponents.
 - (b) **PART B - CITY REQUIREMENTS:** This part describes the subject matter of the RFP, in respect of which the City invites Proposals.
 - (c) **PART C - FORM OF PROPOSAL:** This is the form in which the Proposal should be submitted.

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- (d) **PART D - FORM OF AGREEMENT:** This part contains a model Agreement (the “Form of Agreement”). Any Agreement resulting from the RFP is expected to be substantially in the form of the Form of Agreement.

2.0 KEY DATES

- 2.1 Potential Proponents should note the following key dates:

Event	Time and Date
Deadline for Enquiries	3:00 pm PDT on Tuesday, August 30, 2016 Enquiries received five days or less before the Closing Time may not be processed and may not receive a response. The City's Purchasing Services Office is open on Business Days from 8:30am to 4:30pm and closed Saturdays, Sundays, and holidays.
Closing Time	3:00 pm PDT on Tuesday, September 6, 2016

- 2.2 All references to time in the RFP are references to the time in the City of Vancouver, as shown on the clock used by the City for the purposes of requests for proposals.

3.0 CONTACT PERSON

- 3.1 All enquiries regarding the RFP must be addressed to:

Jason Lo, SCMP
jason.lo@vancouver.ca

- 3.2 All enquiries must be made in writing. In-person or telephone enquiries are not permitted.

- 3.3 **IF A POTENTIAL PROPONENT BELIEVES THAT THE CITY MAY BE UNABLE TO SELECT IT DUE TO A CONFLICT OF INTEREST, BUT IS UNCERTAIN ABOUT THIS, THE POTENTIAL PROPONENT IS URGED TO CONTACT THE ABOVE-MENTIONED INDIVIDUAL AS SOON AS POSSIBLE WITH THE RELEVANT INFORMATION SO THAT THE CITY MAY ADVISE THE POTENTIAL PROPONENT REGARDING THE MATTER.**

4.0 SUBMISSION OF PROPOSALS

- 4.1 Proponents should submit their Proposals on or before the time and date specified in the bottom row of the table in Section 2.1 above (the “Closing Time”).

- 4.2 Each Proponent should submit its Proposal in an envelope clearly marked with the Proponent's name and the RFP title and number (“Supply of a Fleet Management Information System; PS20161295”) to the following address:

City of Vancouver, Supply Chain Management (SCM) Department

Vancouver City Hall
453 West 12th Avenue - 4th Floor
Vancouver, British Columbia
Canada, V5Y 1V4

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Notwithstanding the foregoing, envelopes submitted by courier or otherwise in-person should be delivered to:

Supply Chain Management

453 West 12th Avenue - 4th Floor
Vancouver City Hall
Vancouver, British Columbia
Canada, V5Y 1V4

- 4.3 To be considered by the City, a Proposal must be submitted in the form set out in Part C (the “**Form of Proposal**”), completed and duly executed by the relevant Proponent.
- 4.4 Amendments to a Proposal may be submitted via the same methods, at any time prior to the Closing Time.
- 4.5 Proposals must not be submitted by fax or email.
- 4.6 The City requests that ONE(1) hard copy and one electronic copy (on a CD, flash drive, memory stick or similar medium) of each Proposal (or amendment) be submitted.
- 4.7 Proposals should not be bound in three-ring binders.
- 4.8 Proposals are revocable and may be withdrawn at any time before or after the Closing Time.
- 4.9 All costs associated with the preparation and submission of a Proposal, including any costs incurred by a Proponent after the Closing Time, will be borne solely by the Proponent.
- 4.10 Unnecessarily elaborate Proposals are discouraged. Proposals should be limited to the items specified in Part C of the RFP.
- 4.11 The City is willing to consider any Proposal from two or more Proponents that wish to form a consortium solely for the purpose of submitting a joint Proposal in response to the RFP, provided that they disclose the names of all members of the consortium and all members complete and sign the first page of the Form of Proposal. Nonetheless, the City has a strong preference for Proposals submitted by a single Proponent, including a Proponent that would act as a general contractor and use subcontractors as required.
- 4.12 Proposals that are submitted after the Closing Time or that otherwise do not comply in full with the terms hereof may or may not be considered by the City and may or may not be returned to the Proponent, in the City’s sole discretion.
- 5.0 **CHANGES TO THE RFP AND FURTHER INFORMATION**
- 5.1 The City may amend the RFP or make additions to it at any time.
- 5.2 It is the sole responsibility of Proponents to check the City’s website at: <http://vancouver.ca/doing-business/open-bids.aspx> regularly for amendments, addenda, and questions and answers in relation to the RFP.
- 5.3 Proponents must not rely on any information purported to be given on behalf of the City that contradicts the RFP, as amended or supplemented in accordance with the foregoing Section 5.2

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6.0 PROPOSED TERM OF ENGAGEMENT

- 6.1 The term of any Agreement is expected to be a 5-year period, with 5 possible 1-year extensions, for a maximum total term of 10 years.

7.0 PRICING

- 7.1 All prices quoted in any Proposal are to be exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.
- 7.2 Prices must be quoted in Canadian currency and fixed prices must be quoted for the full term (5 years) of the Proponent's proposed agreement, and anticipated charges thereafter.

8.0 EVALUATION OF PROPOSALS

- 8.1 The City may open or decline to open Proposals in such manner and at such times and places as are determined by the City.
- 8.2 The City currently intends that all Proposals submitted to it in accordance with the RFP will be evaluated by City representatives, using quantitative and qualitative tools and assessments, as appropriate, to determine which Proposal or Proposals offer the overall best value to the City. In so doing, the City expects to examine not only financial terms, but also:
- Part C - Form of Proposal;
 - Part B - City Requirements
 - Sustainability;
 - Any other factors that are mentioned in Part B or elsewhere in the RFP.
- 8.3 The City contemplates that evaluations will be carried out in stages along the following lines:

Stage 1 (Shortlist) - The first stage will involve a shortlisting of Proposals based on an evaluation.

Stage 2 (Demo via Internet) - After the shortlisting is completed, each shortlisted Proponent will be given user case scenarios for which to provide a Fleet Management Information Management solution within a prescribed period of time and will be asked to demonstrate the solution. The City will provide access to an internet-based meeting service; and will record the demonstration meeting. The demonstration will involve the highlighting of key areas of interest, including features/functionalities of the solution and clarification on outstanding questions and concerns of the City's evaluation team, after which leading Proponents will be moved to the final stage of the evaluation process.

Stage 3 (Post Demo) - Some or all leading Proponents may be asked to participate in further meetings, some of which may be on-site. The meetings will provide an opportunity to explore aspects of the Proponent's solution in greater detail, and deal with follow-up questions.

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Evaluation Criteria	Evaluation Weighting	Achieve Minimum Weighting
<p>General Proposal, Qualifications, Capabilities & Experience</p> <p>Including - but not limited to:</p> <p>Comprehensive Proposal</p> <p>Executive Summary & Proponent Overview</p> <p>Resources - Implementation and Support</p> <p>Proposed Work Plan & Project Management</p> <p>Experience & References, and Annex 2 Section 1</p>	10%	6%
<p>Functional & Technical Capabilities- including, but not limited to non-financial and non-Sustainability criteria such as:</p> <p>Annex 2 - Detailed Functional Requirements spreadsheet</p> <p>Annex 3 - Detailed Technical Requirements spreadsheet</p> <p>Annex 4 - Scenarios</p>	60%	36%
Financial	25%	n/a
Sustainability	5%	n/a
Total	100%	n/a

- 8.4 The City will retain complete control over the RFP process at all times until the execution and delivery of an Agreement or Agreements, if any. The City is not legally obligated to review, consider or evaluate Proposals, or any particular Proposal, and need not necessarily review, consider or evaluate Proposals, or any particular Proposal in accordance with the procedures set out in the RFP. The City may continue, interrupt, cease or modify its review, evaluation and negotiation process in respect of any or all Proposals at any time without further explanation or notification to any Proponents.

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- 8.5 The City may, at any time prior to signing an Agreement, discuss or negotiate changes to the scope of the RFP with any one or more of the Proponents without having any duty or obligation to advise the other Proponents or to allow the other Proponents to vary their Proposals as a result of such discussions or negotiations.
- 8.6 The City may elect to short-list Proponents and evaluate Proposals in stages. Short-listed Proponents may be asked to provide additional information or details for clarification, including by attending interviews, making presentations, supplying samples, performing demonstrations, furnishing technical data or proposing amendments to the Form of Agreement. The City will be at liberty to negotiate in parallel with one or more short-listed Proponents, or in sequence, or in any combination, and may at any time terminate any or all negotiations.
- 8.7 The City may also require that any proposed subcontractors undergo evaluation by the City.
- 8.8 For the avoidance of doubt, notwithstanding any other provision in the RFP, the City has in its sole discretion, the unfettered right to: (a) accept any Proposal; (b) reject any Proposal; (c) reject all Proposals; (d) accept a Proposal which is not the lowest-price proposal; (e) accept a Proposal that deviates from the Requirements or the conditions specified in the RFP; (f) reject a Proposal even if it is the only Proposal received by the City; (g) accept all or any part of a Proposal; (h) split the Requirements between one or more Proponents; and (i) enter into one or more agreements respecting the subject matter of the RFP with any entity or entities at any time. Without limiting the foregoing, the City may reject any Proposal by a Proponent that has a conflict of interest, has engaged in collusion with another Proponent or has otherwise attempted to influence the outcome of the RFP other than through the submission of its Proposal.

9.0 CITY POLICIES

- 9.1 The City's Procurement Policy, Ethical Purchasing Policy and related Supplier Code of Conduct found at <http://vancouver.ca/doing-business/selling-to-and-buying-from-the-city.aspx> align the City's approach to procurement with its corporate social, environmental and economic sustainability values and goals. They evidence the City's commitment to maximize benefits to the environment and the community through product and service selection, and to ensure safe and healthy workplaces, where human and civil rights are respected. Each Proponent is expected to adhere to the supplier performance standards set forth in the Supplier Code of Conduct. The Ethical Purchasing Policy shall be referred to in the evaluation of Proposals, to the extent applicable.

10.0 CERTAIN APPLICABLE LEGISLATION

- 10.1 Proponents should note that the City of Vancouver is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's consultants or contractors to protect all personal information acquired from the City in the course of providing any service to the City.
- 10.2 Proponents should note that the *Income Tax Act* (Canada) requires that certain payments to non-residents be subject to tax withholding. Proponents are responsible for informing themselves regarding the requirements of the *Income Tax Act* (Canada), including the requirements to qualify for any available exemptions from withholding.

11.0 LEGAL TERMS AND CONDITIONS

- 11.1 The legal obligations of a Proponent that will arise upon the submission of its Proposal are stated in this Appendix 1 to the Form of Proposal. Except where expressly stated in these

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Legal Terms and Conditions: (i) no part of the RFP consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFP is legally binding on the City.

POTENTIAL PROPONENTS MUST REVIEW THESE LEGAL TERMS AND CONDITIONS CAREFULLY BEFORE SUBMITTING A PROPOSAL.

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PART B - CITY REQUIREMENTS

PART B - CITY REQUIREMENTS

The requirements stated in this Part B (collectively, the “Requirements”) are current as of the date hereof, but they may change or be refined in the course of the evaluation of Proposals or otherwise.

Unless otherwise stated, if, and wherever, the Requirements state a brand name, a make, the name of a manufacturer, a trade name or a vendor catalogue number, it is for the purpose of establishing a grade or quality of materials, goods or equipment only. It is not intended to rule out the use of other equivalent materials, goods or equipment. If, however, products other than those specified are proposed in any Proposal, the Proposal must explicitly include under the heading “Alternative Solutions” the names of such products and their manufacturers, any trade names and any applicable vendor catalogue numbers, and the City may request that the Proponent provide specific evidence of equivalency. Evidence of quality in the form of samples may also be requested.

1.0 REQUIREMENTS

The City has the following Requirements (in separate attachments), in addition to requirements described within the RFP:

Annex 1 - Schedule of Requirements

Annex 2 - Detailed Functional Requirements spreadsheet

Annex 2A - Response Addendum for Annex 2

Annex 3 - Detailed Technical Requirements spreadsheet

Annex 3A - Response Addendum for Annex 3

Annex 4 - Scenarios

Appendix 1 - Glossary

Appendix 2 - Most-Used Reports

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PART C - FORM OF PROPOSAL

RFP No. PS20161295, Supply of a Fleet Management Information System (the "RFP")

Proponent's Name: _____
"Proponent"

Address: _____

Jurisdiction of Legal Organization: _____

Date of Legal Organization: _____

Key Contact Person: _____

Telephone: _____ Fax: _____

E-mail: _____

The Proponent, having carefully examined and read the RFP, including all amendments and addenda thereto, if any, and all other related information published on the City's website, hereby acknowledges that it has understood all of the foregoing, and in response thereto hereby submits the enclosed Proposal.

The Proponent further acknowledges that it has read and agrees to the Legal Terms & Conditions attached as Appendix 1 to this Form of Proposal.

IN WITNESS WHEREOF the Proponent has executed this Proposal Form:

Signature of Authorized Signatory for the Proponent

Date

Name and Title

Signature of Authorized Signatory for the Proponent

Date

Name and Title

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APPENDICES

The Form of Proposal includes the following attached Appendices:

APPENDIX 1	Legal Terms and Conditions of RFP
APPENDIX 2	Submission Format
APPENDIX 3	Commercial Proposal
APPENDIX 4	Proponents References
APPENDIX 5	Certificate of Insurance
APPENDIX 6	Declaration of Supplier Code of Conduct Compliance
APPENDIX 7	Corporate Sustainability Leadership Questionnaire
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APPENDIX 9	Personal Information Consent Form(s)
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APPENDIX 1
LEGAL TERMS AND CONDITIONS OF RFP

1 APPLICATION OF THESE LEGAL TERMS AND CONDITIONS

These legal terms and conditions set out the City's and the Proponent's legal rights and obligations only with respect to the RFP proposal process and any evaluation, selection, negotiation or other related process. In no event will the legal terms and conditions of this Appendix 1 apply to, or have the effect of supplementing, any Contract formed between the City and the Proponent, or otherwise apply as between the Proponent and the City following the signing of any such Contract.

2 DEFINITIONS

In this Appendix 1, the following terms have the following meanings:

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent following and as a result of the Proponent's selection by the City in the City's RFP process.
- (c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.
- (e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix 1), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.
- (f) "Proposal Form" means that certain Part C of the RFP, completed and executed by the Proponent, to which this Appendix 1 is appended.
- (g) "RFP" means the document issued by the City as Request for Proposals No. PS20161295, as amended from time to time and including all addenda.

3 NO LEGAL OBLIGATION ASSUMED BY THE CITY

Despite any other term of the RFP or the Proposal Form, including this Appendix 1 (except only Sections 7, 8.2 and 10 of this Appendix 1, in each case to the extent applicable), the City assumes no legal duty or obligation to the Proponent or to any proposed subcontractor in respect of the RFP, its subject matter or the Proposal unless and until the City enters into a Contract, which the City may decline to do in the City's sole discretion.

4 NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT

The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the

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public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP process, or any contract or tort law duty to preserve the integrity of the RFP process. The Proponent hereby waives and releases the City from any and all such duties and expressly assumes the risk of all Losses arising from participating in the RFP process on this basis.

5 EVALUATION OF PROPOSALS

5.1 Compliance / Non-Compliance

Any proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP, or which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion. The City may also invite a proponent to adjust its proposal to remedy any such problem, without providing the other proponents an opportunity to amend their proposals.

5.2 Reservation of Complete Control over Process

The City reserves the right to retain complete control over the RFP and proposal processes at all times. Accordingly, the City is not legally obligated to review, consider or evaluate the proposals, or any particular proposal, and need not necessarily review, consider or evaluate the proposals, or any particular proposal, in accordance with the procedures set out in the RFP, and the City reserves the right to continue, interrupt, cease or modify its review, evaluation and negotiation processes in respect of any or all proposals at any time without further explanation or notification to any proponents.

5.3 Discussions/Negotiations

The City may, at any time prior to signing a Contract, discuss or negotiate changes to the scope of the RFP, any proposal or any proposed agreement with any one or more of the proponents without having any duty or obligation to advise the Proponent or to allow the Proponent to vary its Proposal as a result of such discussions or negotiations with other proponents or changes to the RFP or such proposals or proposed agreements, and, without limiting the general scope of Section 6 of this Appendix 1, the City will have no liability to the Proponent as a result of such discussions, negotiations or changes.

5.4 Acceptance or Rejection of Proposals

The City has in its sole discretion, the unfettered right to: accept any proposal; reject any proposal; reject all proposals; accept a proposal which is not the lowest-price proposal; accept a proposal that deviates from the requirements of the RFP or the conditions specified in the RFP; reject a proposal even if it is the only proposal received by the City; accept all or any part of a proposal; enter into agreements respecting the subject matter of the RFP with one or more proponents; or enter into one or more agreements respecting the subject matter of the RFP with any other person at any time.

6 PROTECTION OF CITY AGAINST LAWSUITS

6.1 Release by the Proponent

Except only and to the extent that the City is in breach of Section 8.2 of this Appendix 1, the Proponent now releases the City, its officials, its agents and its employees from all liability for any Losses incurred in connection with the RFP or the Proposal, including any Losses in connection with:

- (a) any alleged (or judicially determined) breach by the City or its officials, agents or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation

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or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially))

- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process,
- (c) the Proponent preparing and submitting the Proposal;
- (d) the City accepting or rejecting the Proposal or any other submission; or
- (e) the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

6.2 Indemnity by the Proponent

Except only and to the extent that the City breaches Section 8.2 of this Appendix 1, the Proponent indemnifies and will protect, save and hold harmless the City, its officials, its agents and its employees from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its proposed subcontractors or agents alleging or pleading:

- (a) any alleged (or judicially determined) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process, or
- (c) liability on any other basis related to the RFP or the proposal process.

6.3 Limitation of City Liability

In the event that, with respect to anything relating to the RFP or this proposal process (except only and to the extent that the City breaches Section 8.2 of this Appendix 1), the City or its officials, agents or employees are found to have breached (including fundamentally breached) any duty or obligation of any kind to the Proponent or its subcontractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Proponent or its subcontractors or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of \$100, despite any other term or agreement to the contrary.

7 DISPUTE RESOLUTION

Any dispute relating in any manner to the RFP or the proposal process (except to the extent that the City breaches this Section 7 or Section 8.2 of this Appendix 1, and also excepting any disputes arising between the City and the Proponent under a Contract (or a similar contract between the City and a proponent other than the Proponent)) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

- (a) The arbitrator will be selected by the City's Director of Legal Services;

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- (b) Section 6 of this Appendix 1 will: (i) bind the City, the Proponent and the arbitrator; and (ii) survive any and all awards made by the arbitrator; and

- (c) The Proponent will bear all costs of the arbitration.

8 PROTECTION AND OWNERSHIP OF INFORMATION

8.1 RFP and Proposal Documents City's Property

- (a) All RFP-related documents provided to the Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.
- (b) The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.

8.2 Proponent's Submission Confidential

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), other applicable legal requirements, and the City's right to publicly disclose information about or from the Proposal, including without limitation names and prices, in the course of publicly reporting to the Vancouver City Council about the RFP, the City will treat the Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information.

8.3 All City Information Confidential

- (a) The Proponent will not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City which have been or are in the future provided or communicated to the Proponent at any time (whether before, during or after the RFP process). Furthermore, the Proponent agrees that it has not and must not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.
- (b) The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

9 NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING

9.1 Declaration as to no Conflict of Interest in RFP Process

- (a) The Proponent confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is: (i) an official or employee of the City; or (ii) related to or has any business or family relationship with an elected official or employee of the City, in each case, such that there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Proposal by the City, and, in each case, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

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- (b) The Proponent confirms and warrants that there is no person having an interest (as defined above) who is a former official, former employee or former contractor of the City and who has non-public information relevant to the RFP obtained during his or her employment or engagement by the City, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply

The Proponent confirms and warrants that neither the Proponent nor any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or services to a third party such that entering into an agreement with the City in relation to the subject matter of the RFP would create a conflict of interest or the appearance of a conflict of interest between the Proponent's duties to the City and the Proponent's or its subcontractors' duties to such third party, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal.

9.3 Declaration as to No Collusion

The Proponent confirms and warrants that:

- (a) the Proponent is not competing within the RFP process with any entity with which it is legally or financially associated or affiliated, and
- (b) the Proponent is not cooperating in any manner in relation to the RFP with any other proponent responding to the RFP,

in each case, except as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal.

9.4 Declaration as to Lobbying

The Proponent confirms and warrants that:

- (a) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; and
- (b) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors has engaged in any form of political or other lobbying whatsoever with respect to the RFP or sought, other than through the submission of the Proposal, to influence the outcome of the RFP process,

in each case as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal.

10 GENERAL

- (a) All of the terms of this Appendix 1 to this Proposal Form which by their nature require performance or fulfillment following the conclusion of the proposal process will survive the conclusion of such process and will remain legally enforceable by and against the Proponent and the City.

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- (b) The legal invalidity or unenforceability of any provision of this Appendix 1 will not affect the validity or enforceability of any other provision of this Appendix 1, which will remain in full force and effect.
- (c) The Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the RFP process.

11 INDEPENDENT LEGAL ADVICE

THE PROPONENT ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE BEFORE SUBMITTING ITS PROPOSAL FORM, INCLUDING THIS APPENDIX 1.

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APPENDIX 2
SUBMISSION FORMAT

The submission requirements are outlined in the separate attachment: Annex 1 - Schedule of Requirements, Section 8.0 - Submission Format.

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**APPENDIX 3
COMMERCIAL PROPOSAL**

Complete this Appendix 3 - Commercial Proposal in the form set out below.

Proponent to provide proposed pricing and payment terms, which should be in accordance with Part A, Section 7 of the RFP (as well as any other sections of the RFP imposing requirements as to pricing).

If Proponent is submitting its Proposal by electronic copy (on a CD, flash drive, memory stick or similar medium), please ensure Appendix 3 - Commercial Proposal is provided as a separate file to the entire Proposal. If the Proponent is submitting its Proposal via envelope please ensure Appendix 3 - Commercial Proposal is provided in a separate sealed envelope.

The City has the following Requirement (in separate attachment), in addition to requirements described within the RFP:

Annex 5 - Schedule of Prices

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APPENDIX 4
PROPONENT'S REFERENCES

Refer to separate attachment, Annex 1 - Schedule of Requirements, Section 9.3 - Proponent's Experience, Expertise and References.

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APPENDIX 5
CERTIFICATE OF INSURANCE

Appendix 5 is to be duly completed and signed by the Proponent's insurance agent or broker as evidence of its existing insurance, along with a letter from its insurance broker or agent indicating whether or not (and, if not, then to what extent) it will be able to comply with the insurance requirements set out in the Form of Agreement, should the Proponent be selected as a successful Proponent. (Any successful Proponent will also be required to provide proof of the satisfaction of all insurance requirements prior to or concurrently with the City entering into any Agreement.)



**CERTIFICATE OF EXISTING INSURANCE
TO BE COMPLETED AND APPENDED TO THE PROPOSAL -**

Section 2 through 8 – to be completed and executed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.

2. **NAMED INSURED** (must be the same name as the proponent/bidder and is either an individual or a legally incorporated company)

BUSINESS TRADE NAME or DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**

INSURER _____	Insured Values (Replacement Cost) -
TYPE OF COVERAGE _____	Building and Tenants' Improvements \$ _____
POLICY NUMBER _____	Contents and Equipment \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**

Including the following extensions:	INSURER _____
✓ Personal Injury	POLICY NUMBER _____
✓ Property Damage including Loss of Use	POLICY PERIOD From _____ to _____
✓ Products and Completed Operations	Limits of Liability (Bodily Injury and Property Damage Inclusive) -
✓ Cross Liability or Severability of Interest	Per Occurrence \$ _____
✓ Employees as Additional Insureds	Aggregate \$ _____
✓ Blanket Contractual Liability	All Risk Tenants' Legal Liability \$ _____
✓ Non-Owned Auto Liability	Deductible Per Occurrence \$ _____

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles

INSURER _____	Limits of Liability -
POLICY NUMBER _____	Combined Single Limit \$ _____
POLICY PERIOD From _____ to _____	<i>If vehicles are insured by ICBC, complete and provide Form APV-47.</i>

6. ☐ **UMBRELLA OR** ☐ **EXCESS LIABILITY INSURANCE** **Limits of Liability (Bodily Injury and Property Damage Inclusive) -**

INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Self-Insured Retention \$ _____

7. **PROFESSIONAL LIABILITY INSURANCE**

INSURER _____	Limits of Liability
POLICY NUMBER _____	Per Occurrence/Claim \$ _____
POLICY PERIOD From _____ to _____	Aggregate \$ _____
	Deductible Per Occurrence/Claim \$ _____

If the policy is in a "CLAIMS MADE" form, please specify the applicable Retroactive Date: _____

8. **OTHER INSURANCE**

TYPE OF INSURANCE _____	Limits of Liability
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____
TYPE OF INSURANCE _____	Limits of Liability
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER

Dated _____

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APPENDIX 6
DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

Complete this Appendix 6 - Declaration of Supplier Code of Conduct Compliance in the form set out below.

Purpose:

All proposed suppliers are to complete and submit this form to certify compliance with the supplier performance standards set out in the Supplier Code of Conduct.

The City of Vancouver expects each supplier of goods and services to the City to comply with the supplier performance standards set out in the City's Supplier Code of Conduct (SCC) <http://vancouver.ca/policy_pdf/AF01401P1.pdf>. The SCC defines minimum labour and environmental standards for City suppliers and their subcontractors.

Suppliers are expected to comply with the aforementioned standards upon submitting a tender, proposal, application, expression of interest or quotation to the City, or have a plan in place to comply within a specific period of time. The City reserves the right to determine an appropriate timeframe in which suppliers must come into compliance with these standards. To give effect to these requirements, an authorized signatory of each proposed vendor must complete the following declaration and include this declaration with its submission:

As an authorized signatory of _____ (*vendor name*), I declare that I have reviewed the SCC and to the best of my knowledge, _____ (*vendor name*) and its proposed subcontractors have not been and are not currently in violation of the SCC or convicted of an offence under national and other applicable laws referred to in the SCC, other than as noted in the table below (*include all violations/convictions that have occurred in the past three years as well as plans for corrective action*).

Section of SCC / title of law	Date of violation /conviction	Description of violation / conviction	Regulatory / adjudication body and document file number	Corrective action plan

I understand that a false declaration and/or lack of a corrective action plan may result in no further consideration being given to the submission of _____ (*vendor name*).

Signature: _____

Name and Title: _____

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APPENDIX 7
CORPORATE SUSTAINABILITY LEADERSHIP QUESTIONNAIRE

Complete this Appendix 7 - Corporate Sustainability Leadership Questionnaire in the form set out below.

As part of the City's Corporate Procurement Policy and related Supplier Code of Conduct described in Section 9.1 of Part A, all City vendors must meet minimum requirements related to ethical, social and environmental standards.

Beyond these basic requirements, the City would like to recognize vendors that are demonstrating leadership and innovation in sustainability. In order to be able to do so, the City requires that Proponents answer the following questions. The answers provided will be evaluated as part of the Proposal evaluation described in Section 8.0 of Part A.

Please keep in mind that these questions relate to your company's internal operations and overall sustainability leadership.

The City may request that the Proponent provide additional information to support any of the responses provided.

If additional space is required, the Proponent may attach its response(s) to this Annex and reference the relevant question and section number.

For all questions where the answer is 'Yes' and additional information is requested, if this information is not included in the proposal, the answer may not be evaluated.

For all questions where there is a word limit, responses are to be kept within this word limit. Information in excess of the word limit may not be evaluated.

Questionnaire Structure

Section 1: Environmental Impact	Environmental or Sustainability Policy Reducing greenhouse gas (GHG) emissions Reducing waste Sustainable purchasing
Section 2: Social Impact	Living wage employer Workplace development programs Supporting social enterprises Sustainable business
Section 3: Definitions	Definitions for key terms used in this Annex.

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SECTION 1: ENVIRONMENTAL IMPACT

This section of the leadership questionnaire addresses the following:

- *Environmental or Sustainability Policy or Statement*
- *reducing greenhouse gas (GHG) emissions*
- *reducing waste*
- *sustainable purchasing*

1. Do you have a documented Environmental or Sustainability Policy or Statement?

☐ Yes ☐ No

If no, go to question 2.

If yes, please address the following:

- a. Attach a copy of the policy or statement to your Proposal.
- b. If the policy is publicly available, please provide a link to the document:

2. Does your company measure its greenhouse gas (GHG) emissions?

☐ Yes ☐ No

If yes, state total annual GHG emissions (tCO₂e): _____

3. Has your company adopted GHG reduction targets or goals?

☐ Yes ☐ No

If yes, state target(s) and year by which they will be achieved (e.g., 33% reduction by 2020):

4. Do you report your GHG emissions to a third party? (e.g., Carbon Disclosure Project, Global Reporting Initiative, Climate Registry, Climate Smart, Ecobase, Offsetters, etc.)

☐ Yes ☐ No

If yes, state the name of the 3rd party: _____

5. Does your company own buildings in Metro Vancouver?

☐ Yes ☐ No

If no, skip to question 7.

If yes, describe efforts in the past three (3) years to improve the energy efficiency of owned buildings in Metro Vancouver with respect to each of the elements listed below. **Please limit answer to 400 words or less.**

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- a. equipment and lighting upgrades (e.g., HVAC, water heaters, LED lighting)
 - b. building envelope improvements (e.g., insulation, windows)
 - c. staff conservation and engagement programs (e.g., turning off lights and computers, etc.)
-
-
-

6. Has your company (or has any of your buildings) been recognized for building energy management excellence by a recognized third party such as BC Hydro Power Smart, BOMA BEST, LEED, Portfolio Manager Energy Star, etc.)?

☐ Yes ☐ No

If yes, state the name(s) of the 3rd party(ies) and type of recognition:

7. Does your company own or lease fleet vehicles and/or heavy off-road equipment to be operated in Metro Vancouver?

☐ Yes ☐ No

In no, skip to question 9.

If yes, please address the following questions:

a) what size is your fleet (including heavy off-road equipment)?

b) Describe actions in the past three (3) years to reduce the GHG emissions of vehicles and heavy equipment operated in Metro Vancouver. (Actions could include: purchase of low emissions vehicles, use of alternative fuels, deployment of telematics software; driver training programs, etc.). **Please limit answer to 250 words or less.**

8. Does your company encourage employees to take more environmentally friendly transportation to get to work?

☐ Yes ☐ No

If yes, describe incentives in place to encourage employees to take more environmentally friendly transportation to get to work (e.g., car sharing, secure bike parking and on-site change facilities, public transit incentives). **Please limit answer to 250 words or less.**

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9. Describe any other initiatives undertaken in past three (3) years that have significantly reduced the GHG emissions of your operations. Please limit answer to 250 words or less.

10. Does your company measure the total amount of solid waste generated by your operations annually?

☐ Yes ☐ No

If yes, state annual solid waste figures (kg or tonnes): _____

11. Does your company have waste reduction and/or diversion targets or goals?

If yes, state targets and by what year they are to be achieved?

12. Does your company have an office or operations recycling program in place?

☐ Yes ☐ No

If yes, which materials does your company recycle - check only those that apply:

- ☐ office paper
- ☐ plastic and glass containers
- ☐ soft plastic
- ☐ food waste/compostables
- ☐ batteries
- ☐ printer or toner cartridges
- ☐ Styrofoam
- ☐ IT equipment / electronics / mobile devices
- ☐ clean wood (e.g., pallets)
- ☐ metals

13. Describe any other initiatives undertaken in past three (3) years that have significantly reduced waste from your operations. Please limit answer to 250 words or less.

14. Does your company have a Sustainable or Ethical Purchasing Policy or a Code of Conduct for Suppliers that outlines minimum ethical labour standards that must be followed by suppliers?

☐ Yes ☐ No

In no, skip to question 16.

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If yes, please address the following:

- a. Attach a copy of the policy and/or code to the Proposal
- b. If the policy or code of conduct is publicly available, please provide a link to document:

15. Indicate which environmentally preferable and/or sustainable goods or services your company currently purchases – **check only those that apply**:

- ☐ Sustainable food items (e.g., Fairtrade coffee; organic produce; OceanWise seafood)
- ☐ Copy paper (e.g., 100 per cent post-consumer waste; Forest Stewardship Council certified; tree free)
- ☐ Janitorial supplies (e.g., ECOLOGO or Green Seal certified)
- ☐ IT equipment (e.g., EPEAT Gold, EnergyStar qualified)
- ☐ Office products (e.g., ECOLOGO; recycled; non-toxic)
- ☐ Printing services (e.g., Forest Stewardship Council certified paper and printer)
- ☐ Promotional / marketing items (e.g., fair labour practices; reusable; recyclable)
- ☐ Courier services (e.g., use energy efficient, low carbon or alternative fuel vehicles)
- ☐ Catering services (e.g., serve sustainable food; employ social enterprises; use reusable serving ware)
- ☐ Landscaping services (e.g., use energy efficient equipment; employ social enterprises)
- ☐ Other: (list)

SECTION 2: SOCIAL IMPACT

This section of the leadership questionnaire addresses the following elements:

- *living wage employer*
- *workplace development programs*
- *supporting social enterprises*
- *sustainable business*

1. Is your company already a certified Living Wage employer, or working towards becoming one? See definition of *Living wage employer* in Section 3 below.

- ☐ Yes ☐ No

If yes, please state either:

- a) date of certification; OR
 - b) date by which you expect to become certified
-
- _____
-
- _____

2. Does your company provide employment and/or training opportunities for *person(s) with barriers to employment* (e.g., people with addictions, disabilities, mental health issues; people who are

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newcomers or refugees, etc.) that go beyond the hiring practices required by law? See definition of *person with barriers to employment* in Section 3 below.

☐ Yes ☐ No

If yes, describe the program including the name of the non-profit organization or educational institution or government agency that you work with to identify potential trainees and employees; and the number of employees/trainees that work in your company.

3. Does your company conduct business with, or support in other ways, one or more *social enterprises* (as defined in Section 3 below).

☐ Yes ☐ No

If yes, name the social enterprise(s) and describe the nature of the business conducted and/or support provided.

4. Is your company structure either of the following:

a. Social enterprise (as defined in Section 3 below)

☐ Yes ☐ No

If yes, state the name of the registered non-profit or co-operative (including society and/or charitable number):

b. Community Contribution Company (C3) (as defined in Section 3 below)

☐ Yes ☐ No

5. Has your company's sustainability performance been reviewed or certified by a third party? (e.g., B Lab, ISO14001, SA8000, Social Fingerprint, etc.)

☐ Yes ☐ No

If yes, state the name of the third party and date of certification or date of last review:

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6. Describe any additional social sustainability initiatives that demonstrate your company's commitment to the health and well-being of local communities. **Please limit answers to 250 words or less.**
-
-
-

SECTION 3: DEFINITIONS

Living Wage Employer:

Living wage employers adhere to the following criteria:

- All employees - full-time, part-time and casual - are paid the current living wage rate for their region. See www.livingwageforfamilies.ca for current Metro Vancouver and Fraser Valley living wage rates.
- The living wage rate calculation for an employer takes into account its employees' *total* compensation package (wage + benefits). If employees receive non-mandatory benefits, the living wage rate is reduced to take this into account. External contract staff (not direct employees) who provide services to their employer on a regular and ongoing basis must also be paid a living wage.
- Employees who receive incentive-based pay (tips) or commissions can be paid less than a living wage, provided their total earnings - including incentive-based pay and/or commissions - equal or exceed the living wage.

Social Enterprise:

"Social enterprises are businesses owned by non-profit organizations, that are directly involved in the production and/or selling of goods and services for the [combined] purpose of generating income and achieving social, cultural, and/or environmental aims (Social Enterprise Council of Canada)." See www.socialenterprisecanada.ca.

In addition to having the aforesaid combined purpose, to qualify as a "Social Enterprise" for purposes hereof, an entity must:

- be a business operated by a registered non-profit or community services co-operative;
- have a product or service that it sells to customers;
- have a defined social and/or environmental mandate.

Person with Barriers to Employment:

A "person with barriers to employment" is someone who faces one or more circumstances that can lead to underemployment or unemployment. There are a wide range of circumstances that can create barriers to employment including but not limited to: addictions, disabilities, mental health issues, and being a newcomer or refugee. For purposes hereof, to qualify as a "person with barriers to employment", the employee or trainee must be participating in a recognized, pre-approved employment program for person(s) with barriers to employment run by a non-profit organization or educational institution or government agency.

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Community Contribution Company (C3):

“Community Contribution Company” means a corporation formed under the laws of British Columbia that includes in its articles the following statement:

This company is a community contribution company, and, as such, has purposes beneficial to society. This company is restricted, in accordance with Part 2.2 of the *Business Corporations Act*, in its ability to pay dividends and to distribute its assets on dissolution or otherwise.

Or, a company incorporated under another jurisdiction that includes in its articles substantively similar restrictions related to dividends and distribution of assets.

Refer to www.fin.gov.bc.ca/prs/ccc for more information.

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APPENDIX 8
SUSTAINABILITY REQUIREMENTS QUESTIONNAIRE

Complete this Appendix 8 -Sustainability Requirements in the form set out below.

Energy Efficiency - Services

The City prefers that Proponents use the most energy efficient equipment possible to deliver the service and/or use a viable low carbon alternative.

1. Describe the type of equipment to be used and the fuel type (e.g., electricity, diesel, battery, etc.)
2. For each type of equipment to be used, provide information to demonstrate that the equipment is the most energy efficient possible (e.g., ENERGY STAR qualified; 100 per cent solar powered). See definition below.
3. Are you able to propose a low carbon alternative to the use of equipment that uses fuel or electricity?

Yes

No

If yes, describe the alternative in detail and how it reduces energy consumption:

4. Definitions

Energy Efficient

Ways to demonstrate energy efficiency, include, but are not limited to the following types of measures:

- ENERGY STAR qualified,
- position on the EnerGuide label "energy consumption indicator" (e.g., above 50%),
- derives 100 per cent of energy from renewable sources (e.g., solar)

Proposed Evaluation Framework

Requirement	Score	Response
Fuel type	1, 3 or 5	1 - gas or diesel 3 - natural gas, biodiesel 5 - renewable, solar, biodiesel
Energy efficiency of equipment	1, 3 or 5	1 - general information provided; 3 - provide information; 50 to 75 per cent on Energuide 5 - ENERGY STAR qualified, above 75% on Energuide; renewable energy

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Low carbon alternative	1, 3 or 5	1 - general statements 3 - provides some level of detail 5 - provides excellent detail and option is viable.
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APPENDIX 9
PERSONAL INFORMATION CONSENT FORM(S)

Complete one copy of this Appendix 9 - Personal Information Consent Form(s), in the form set out below, for each key personnel for whom a CV or other information regarding employment history and qualifications has been included in the Proposal.

PERSONAL INFORMATION CONSENT FORM

RFP

Reference #PS20161295

Title: Supply of a Fleet Management Information System

With the provision of my signature at the foot of this statement I, _____

_____ (Print Name)

consent to the indirect collection from _____

_____ (Print Name of Proponent)

of my personal information in the form of a work history, resume or summary of qualifications.

In consenting to this indirect collection, I understand that my personal information, so collected, will be used by the City for the sole purpose of evaluating the submitted response to the above-noted procurement process. I understand further that my personal information, once collected by the City, will be handled by the City in accordance with the provisions of the (BC) *Freedom of Information and Protection of Privacy Act*.

_____ Signature))))	_____ Date
--------------------	------------------	---------------

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**APPENDIX 10
SUBCONTRACTORS**

Complete this Appendix 10 - Subcontractors in the form set out below by listing all of the subcontractors that the Proponent proposes to use in carrying out its work under an Agreement, or state that the Proponent does not propose to use any subcontractors.

If selected to enter into an Agreement with the City, the Proponent may be limited to using subcontractors listed in its Proposal. If the City objects to a subcontractor listed in a Proposal, the City may permit a Proponent to propose a substitute Subcontractor acceptable to the City.

Subcontracted Scope		
Subcontractor		
Contact (name, title, email, telephone no.)		
Approximate Percent of the Work to be Subcontracted		
The Subcontractor's Relevant Experience (identify at least three similar projects within the last five years, including the client)	1. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	
	2. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	
	3. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	

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APPENDIX 11
PROPOSED AMENDMENTS TO FORM OF AGREEMENT

Complete this Appendix 11 - Proposed Amendments to Form of Agreement in the form set out below by detailing any proposed amendments to the Form of Agreement. If no amendments to the Form of Agreement are proposed, state "none". It is at the City's sole discretion whether or not these proposed amendments will be considered for the Form of Agreement.

Section / General Condition	Proposed Amendment	Rationale and Benefit

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APPENDIX 12
FINANCIAL STATEMENTS

Attached as Appendix 12 to this Form of Proposal the Proponent's financial statements, prepared by an accountant and covering at least the prior two years.

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APPENDIX 13
PROOF OF WORKSAFEBC REGISTRATION

Attached as Appendix 13 to this Form of Proposal proof of valid WorkSafeBC registration.

REQUEST FOR PROPOSALS NO. PS20161295
SUPPLY OF A FLEET MANAGEMENT
INFORMATION SYSTEM
PART C - FORM OF PROPOSAL

APPENDIX 14
CONFLICTS; COLLUSION; LOBBYING

Complete this Appendix 14 - Conflicts; Collusion; Lobbying in the form set out below by setting out any exceptions to the declarations in Section 9 of the Legal Terms and Conditions attached as Appendix 1 to this Form of Proposal or indicate that there are no exceptions, as applicable.

Exceptions to Declaration as to no Conflict of Interest in RFP Process (Section 9.1 of Legal Terms and Conditions)	
Exceptions to Declaration as to No Conflict of Interest Respecting Proposed Supply (Section 9.2 of Legal Terms and Conditions)	
Exceptions to Declaration as to No Collusion (Section 9.3 of Legal Terms and Conditions)	

REQUEST FOR PROPOSALS NO. PS20161295
SUPPLY OF A FLEET MANAGEMENT
INFORMATION SYSTEM
PART D - SAMPLE (FORM OF AGREEMENT)

PART D
FORM OF AGREEMENT

REQUEST FOR PROPOSAL NO. PS20161295

SUPPLY OF A FLEET MANAGEMENT

INFORMATION SYSTEM

PART D - SAMPLE (FORM OF AGREEMENT)

[NTD: This draft has been prepared for RFP PS20161295 for the sole purposes of evaluating and engaging one or more proponents in discussions. Accordingly, a number of areas in this draft need to be considered, discussed, completed or finalized and it is expected that these areas will be completed and finalized as discussions with one or more proponents progress. These discussions may also determine that certain areas of this draft may not be applicable. This draft is also intended to form the basis of a legally binding agreement with the successful proponent for the supply of the services described in the RFP.]

SUPPLY OF A FLEET MANAGEMENT INFORMATION SYSTEM

SUPPLY CONTRACT

BETWEEN

CITY OF VANCOUVER

AND

[•]

DATED: [•]

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Schedule S	Proposal
Schedule T	Licence + Maintenance Status/Metrics Table
Schedule U	Change Order

[NTD: Some schedules have been attached in draft form for discussion but others still need to be discussed and prepared. This list of schedules will be refined and modified as necessary based on discussions between the City and the successful proponent]

THIS SUPPLY CONTRACT (this “Contract”) dated [●], 2016,

BETWEEN:

CITY OF VANCOUVER, a municipal corporation
continued pursuant to the Vancouver Charter and
having an office at 453 West 12th Avenue, Vancouver,
British Columbia, Canada, V5Y 1V4

(the “City”)

AND:

[●]

(the “Vendor”)

BACKGROUND:

- A. Pursuant to the City's Request for Proposal No. PS20161295 (the “RFP”), the City invited from qualified Proponents proposals to supply a fleet management information system comprised of the software, services and documentation as set out in the RFP (the “System”).
- B. In response to the RFP, the Vendor submitted a proposal (the “Proposal”) offering to provide the System specified in the RFP to the City.
- C. Based on the City's evaluations of the Proposal, the City and Vendor entered into discussions with a view to entering a contract to supply the specified System to the City.
- D. The City and the Vendor have now agreed on the legal terms and conditions on which the Vendor will supply the System to the City as provided in this Contract.

IN CONSIDERATION OF THE MUTUAL PROMISES AND AGREEMENTS IN THIS CONTRACT, THE CITY AND THE VENDOR NOW LEGALLY AGREE AS FOLLOWS:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 General Definitions

Except where a contrary meaning is expressly indicated elsewhere or the context otherwise requires, the following words in the Contract Documents have the meanings set out below:

- (a) “**Acceptance Tests**” means the tests or processes, as applicable, outlined in *Schedule I [Acceptance Tests]* by which the City will evaluate, as applicable, whether the System, and the Services, Modules and Software thereof, have been provided in compliance with the requirements of this Contract.
- (b) “**Affiliated Organizations**” means any legal entity or incorporated association falling within the following categories:
 - (i) non-profit corporations or incorporated associations to whom substantial funding or subsidies are provided by the City;

- (ii) any “affiliate” (as defined below) of the City which provides services authorized or required by the Vancouver Charter; or
- (iii) governmental authorities to whom the City is required to provide administrative services as a result of provincial legislation mandating or authorizing the provision of such services; and

by way of example only and without limiting the generality of the above categories, the following are Affiliated Organizations:

- (iv) Vancouver Board of Parks and Recreation, including the various non-profit community associations operating within the Park Board’s various community centres;
- (v) Vancouver Parking Corporation;
- (vi) Emergency Communications for Southwest British Columbia;
- (vii) Vancouver Civic Development Corporation;
- (viii) Vancouver Economic Development Commission;
- (ix) Vancouver Police Board;
- (x) Vancouver Public Library Board;
- (xi) Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (aka VANOC);
- (xii) The Greater Vancouver Convention and Visitors Bureau (aka Tourism Vancouver);
- (xiii) Hastings Institute;
- (xiv) Harbour Park Corporation; and
- (xv) Public Housing Corporation,

provided that, in this definition, the word “affiliate” means any corporation the shares of which are held by the City, other than by way of security only, and (i) the votes carried by such shares are sufficient, if exercised, to elect or appoint one or more of the directors of the corporation, or (ii) the enabling legislation for such corporation permits the City as of right to appoint one or more directors of the corporation.

- (c) **“Amendment” or “Change Order”** means a change in any of the Contract Documents which has been agreed upon in writing and executed by the City and the Vendor including:
 - (i) any Certificate of Acceptance; and
 - (ii) a document substantially in the form attached as Schedule T [Change Order] but only if it has been completed and signed by the parties.
- (d) **“Business Day”** means any day that is not a Saturday, Sunday, statutory holiday in British Columbia, Easter Monday, or Boxing Day.

- (e) **“Business Third Party”** means a third party with whom the City conducts its ordinary and customary business.
- (f) **“Certificate”** means a Certificate of Acceptance or Certificate of Final Acceptance.
- (g) **“Certificate of Acceptance”** means each certificate to be issued or deemed issued by the City Project Manager in accordance with the Contract Documents, indicating successful completion of each Acceptance Test to which such Certificate of Acceptance relates, including the Certificate of Final Acceptance.
- (h) **“Certificate of Final Acceptance”** means the Certificate to be issued or deemed issued by the City Project Manager in accordance with the Contract Documents when the Services have successfully passed the final Acceptance Test in accordance with *Schedule I [Acceptance Tests]*.
- (i) **“Certificate of Insurance”** means a certificate substantially in the form attached as *Schedule O [Certificate of Insurance]* and issued and duly signed by the Vendor’s insurer or insurance agent in accordance with *ARTICLE 12 [Insurance]*.
- (j) **“Change Order”** has the same meaning as “Amendment”.
- (k) **“City”** means the City of Vancouver, a municipal corporation and the customer who is entering into this Contract with the Vendor.
- (l) **“City-Caused Delay”** means a delay described in *Section 23.1(d) [Default of City’s Obligations]*.
- (m) **“City Project Manager”** means the person appointed by the City to act as the sole contact for the City with the Vendor throughout the Project.
- (n) **“City Project Team”** means those members of the Project Team who are employees, sub-contractors, or other agents of the City.
- (o) **“City Records”** means the records described in *Section 16.2(a) [Vendor to Protect All City Records]*.
- (p) **“City’s Proprietary Material”** means all materials and information created, acquired (other than from the Vendor or anyone on behalf of the Vendor) or developed by the City including, all materials and information provided to the Vendor in or with the RFP, in preparation for Contract discussions, during Contract discussions, or during the Project, unless expressly indicated otherwise.
- (q) **“Contemplated Change Notice/Change Order”** means a document substantially in the form attached as *Schedule T [Change Order]*.
- (r) **“Contract”** means the contractual agreement consisting of the Contract Documents.
- (s) **“Contract Documents”** means this Form of Agreement, including all Schedules, all of which are now incorporated by this reference and made an integral part of this Contract, and all Amendments to this Contract.
- (t) **“Delivery Date”** means any date referred to in the Implementation Schedule or *Schedule C [Implementation - Statement of Work]* as a “Delivery Date”, “Start Date”, or “Finish Date”.

- (u) **“Documentation”** means the Manuals (as that term is defined in *Schedule B [Pricing]*), and including Software product manuals, installation guides and detailed product specifications and documentation required to be delivered with the Software or Source Code (subject always to the Source Code Escrow Agreement) and any Release of any Software or Source Code all as more particularly described in *Schedule B [Pricing]* and in *Schedule G [Training]*.
- (v) **“Effective Date”** means the date set out on the title page and first page of this Contract.
- (w) **“Event of Default”**, with respect to the Vendor, has the meaning ascribed in *Section 22.1 [Event of Default—Defined]*.
- (x) **“Finish Date”** means any date referred to in the Table set out in the Implementation Schedule as a “Finish Date”.
- (y) **“Form of Agreement”** or **“FOA”** means the main body of this Contract excluding all of its Schedules.
- (z) **“Functional Requirements”** means the functionality that the Software must have when operated in conjunction with the Hardware and Software Platform in order to comply with this Contract, subject to Section 2.1 [Priority of Documents] as outlined in Schedule S [Proposal] pursuant to Schedule R [RFP], and then further modified and clarified by the following provisions of this Contract:
 - (i) *Schedule A [Functional Requirements]*;
 - (ii) *Section 3.1 [Vendor’s Security Obligations]*; and
 - (iii) *Section 13.1 [Software and Documentation Warranties]*.
- (aa) **“Go Live”** means to commence the actual productive use of the Software in a Production Environment (as opposed to use of the Software in a Non-Production Environment such as a training, testing or development environment).
- (bb) **“Go Live Date”** means the date referred to as such in the Implementation Schedule as the “Go Live Date”.
- (cc) **“Hardware and Software Platform”** means the City’s existing desktop, network, server and current development environment as generally described in *Schedule D [Hardware and Software Platform]*.
- (dd) **“Holdback”** means the holdback amount as set out in *Schedule J [Payment Schedule]* which amount is intended to secure the performance of the Vendor’s obligations under this Contract.
- (ee) **“Implementation Schedule”** means the chronological list of all major tasks/activities with description, scheduled dates of completion and responsibilities of each party as outlined in *Appendix C.1 to Schedule C [Implementation - Statement of Work]*.
- (ff) **“Installation Sites”** means the Installation Sites for the Hardware and Software Platform.
- (gg) **“Intellectual Property Rights”** means all of the following and all rights in, arising out of, or associated with:

- (i) all inventions, methods, and processes (collectively, the “patentable subject matter”) and all patents issued in respect of patentable subject matter and all associated utility models and patent applications as well as all reissues, divisions, re- examinations, renewals, extensions, provisionals, continuations and continuations-in-part and equivalent or similar rights anywhere in the world in inventions and discoveries including invention disclosures;
 - (ii) all trade secrets and other rights in know-how and other confidential or proprietary information;
 - (iii) all literary, artistic, and other copyright protected works, registrations and applications for registration of copyright protected works, and all other corresponding rights throughout the world;
 - (iv) all trade-marks (including word marks, design marks, logos, common law trade-marks and service marks) and trade names, and all registrations and applications for same and all associated goodwill throughout the world; and
 - (v) any similar, corresponding or equivalent rights to any of the above anywhere in the world.
- (hh) **“Intentional City Fundamental Breach”** means a default of the type described in *Section 23.2 [Major City Default]*.
- (ii) **“Interfaces”** means any programming interface or adaptor between the Software and third party or City-owned or licensed software that facilitates the import and export of data or intercommunication between such software.
- (jj) **“Laws and Regulations”** means all present and future laws, statutes, by-laws, regulations, treaties, judgments and decrees and, whether or not having the force of law, all official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any domestic government, including any federal, provincial, regional or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions.
- (kk) **“Licence”** means the licence from the Vendor to the City to use the Software, Source Code (subject always to the Source Code Escrow Agreement) and Documentation as set out in *Article 16 [Licence and Proprietary Material]*, and “Licensed” will have a corresponding meaning.
- (ll) **“Licence Fee”** means the consideration payable by the City to the Vendor for the Licence as set out in *Article 16 [Licence and Proprietary Material]* and *Schedule B [Pricing]*.
- (mm) **“Losses”** means, in respect of any matter, all direct and indirect losses, damages, liabilities, deficiencies, costs and expenses (including all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement, whether from a third person or otherwise).
- (nn) **“Maintenance and Support Agreement”** means the separate agreement in the form of *Schedule L [Maintenance and Support Agreement]* for the ongoing provision of Maintenance Services as more particularly described in *Article 14 [Maintenance/Source Code]*.

- (oo) **“Maintenance Cost”** means the amounts payable by the City to the Vendor in consideration for the Maintenance Services to be provided by the Vendor pursuant to the Maintenance and Support Agreement.
- (pp) **“Maintenance Services”** means the services to be provided by the Vendor pursuant to the Maintenance and Support Agreement, which services are separate and apart from the Services.
- (qq) **“Module”** means a component of the Software which provides a segregate set of functionality, and for certainty, a Module includes any and all Releases related to that Module.
- (rr) **“Operating Hours of the City”** means the hours the City is normally staffed, namely 8:00 A.M. - 5:30 P.M. on Business Days.
- (ss) **“Optional Module”** means any Module that is not part of the Core Software.
- (tt) **“Project”** means the implementation of the Software in accordance with the Contract starting on the Effective Date and ending with the issuance of the Certificate of Final Acceptance as more particularly described in *Schedule C [Implementation - Statement of Work]*.
- (uu) **“Project Completion Date”** means the date on which the Certificate of Final Acceptance is issued.
- (vv) **“Project Office”** means the office located at • Vancouver BC, to be used by the City and Vendor in conjunction with the Installation Sites for the Project, or such other site within City of Vancouver in the event that the City requires the Project Office to be moved to an alternate site.
- (ww) **“Project Services”** means all services to be provided by the Vendor in accordance with the Vendor’s obligations under this Contract (including, for certainty, “Fixed Price Services” and “Time & Materials Services” as defined in *Schedule B [Pricing]*, and including “Training Services” as defined in *Schedule G [Training]*), but expressly excluding Maintenance Services.
- (xx) **“Project Team Member”** means any individual employed by the Vendor or the City to assist the Vendor Project Manager or City Project Manager in carrying out the Project.
- (yy) **“Proposal”** means the Vendor’s proposal dated as of •, together with all accompanying schedules, and other attachments, as submitted by the Vendor to the City in response to the RFP, which proposal is attached as *Schedule R [Proposal]*.
- (zz) **“Proprietary Material”** means, in respect of the City, the City Proprietary Material and, in respect of the Vendor, the Vendor Proprietary Material.
- (aaa) **“Release”** means any modification or extension of the Software (including updated or enhanced functionality) which the Vendor periodically provides to its customers who subscribe for Software maintenance services and are current with respect to their applicable Software maintenance fees.
- (bbb) **“RFP”** means Request for Proposals, No. PS20161295 issued by the City on •, and attached as *Schedule Q [RFP]*.
- (ccc) **“Schedules”** means those parts of this Contract listed in Section 1.5 [Schedules].

- (ddd) **“Software”** means •
- (eee) **“Source Code”** means the human readable commented form of the Software, including programs and flowcharts.
- (fff) **“Source Code Escrow Agreement”** means the separate agreement in the form of Schedule P [Source Code Escrow Agreement] as more particularly described in *Article 14 [Maintenance/Source Code]*.
- (ggg) **“Start Date”** means any date referred to in the Table set out in the Implementation Schedule as a “Start Date”.
- (hhh) **“Third Party Software”** means computer software programs that are owned by third parties, and are not part of the Software and that the City must licence directly from the owner, including: •
- (iii) **“Total Purchase Price”** means the total purchase price listed on *Schedule B [Pricing]*.
- (jjj) **“Unavoidable Delay”** means a delay defined by *Section 28.14 [Unavoidable Delay]*.
- (kkk) **“User Rights”** means, depending on the context and subject always to *Schedule S [Licence + Maintenance Status/Metrics Table]*, the number of seats or other unit of measurement (or metric) for the pricing and payment by the City for the Licence.
- (lll) **“Vendor Project Manager”** means the person appointed by the Vendor to act as the sole contact for the Vendor with the City throughout the Project.
- (mmm) **“Vendor Project Team”** means those members of the Project Team who are employees, sub-contractors, or other agents of the Vendor.
- (nnn) **“Vendor’s Proprietary Material”** means all materials and information created, acquired (other than from the City or anyone on behalf of the City) or developed by the Vendor, including the Software, Source Code, Documentation, and Proposal unless expressly indicated otherwise.
- (ooo) **“WorkSafeBC”** means the Workers Compensation Board of British Columbia.
- (ppp) **“WorkSafe Rules”** means the *Workers Compensation Act* (British Columbia), including all Regulations enacted pursuant to such Act, all as such Act or Regulations are amended or re-enacted from time-to-time.

1.2 Additional Definitions in Schedules

Where certain words or phrases are used predominantly within a given Schedule to this Contract, those words and phrases have been defined within that Schedule. However, despite the location of such definition, such words and phrases are intended to have their defined meaning where used any where in the Contract and not merely within such Schedule.

1.3 Interpretation

Except as otherwise expressly provided or as the context otherwise requires, in this Contract:

- (a) **Parts of Contract** – a reference to an **“Article”** is to an Article of this Contract, and the word **“Section”**, **“Paragraph”**, followed by a number or some combination of numbers and letters refers to the section, paragraph, subparagraph, clause or subclause of this Contract so designated;

- (b) **Headings and Titles** – headings and titles used in this Contract are for reference purposes only and shall not be deemed a part of this Contract;
- (c) **“Including” and “Or”**—the word **“including”**, when following a general statement or term (whether or not non-limiting language such as “without limitation” or “but not limited to” or “without limitation and by way of example only” or other words of similar import are used with reference thereto), is not to be construed as limiting the general statement or term to any specific item or matter set forth or to similar items or matters, but rather as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope, and the word **“or”** does not imply an exclusive relationship between the items being connected;
- (d) **Successors** – a reference to an entity includes any successor to that entity;
- (e) **Gender, Number, etc.** – a word importing the masculine gender includes the feminine and neuter, a word in the singular includes the plural, a word importing a corporate entity includes an individual, and vice versa and **“person”** will mean an individual, partnership, corporation (including a business trust), joint stock company, trust unincorporated association, joint venture, or other entity or a government or any agency, department or instrumentality thereof and vice versa; and
- (f) **Technical Terminology** – words, phrases and acronyms not otherwise defined herein that have a meaning commonly understood and accepted by persons familiar with the business of information technology will be interpreted and understood to have that meaning herein.

1.4 Schedules

The following Schedules to this Contract are incorporated by reference into and form part of this Contract:

[NTD: Some schedules have been attached in draft form for discussion but others still need to be discussed and prepared. This list of schedules will be refined and modified as necessary based on discussions between the City and the successful proponent]

Schedule A	Functional Requirements
Schedule B	Pricing
Schedule C	Implementation - Statement of Work
Schedule D	Hardware and Software Platform
Schedule E	Sub-Contractors
Schedule F	Key Personnel
Schedule G	Training
Schedule H	Performance Standard Warranties
Schedule I	Acceptance Tests
Schedule J	Payment Schedule
Schedule K	Affiliated Organizations (not used)
Schedule L	Maintenance and Support Agreement
Schedule M	Authorized Affiliated Organization Agreement
Schedule N	Business Third Party Non-Disclosure Agreement
Schedule O	Certificate of Insurance
Schedule P	Source Code Escrow Agreement
Schedule Q	Software Licence
Schedule R	RFP
Schedule S	Proposal
Schedule T	Licence + Maintenance Status/Metrics Table

Schedule U Change Order

**ARTICLE 2
CONTRACT DOCUMENTS AND PRIORITY OF DOCUMENTS**

2.1 Priority of Documents

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In the event of any inconsistency or conflict between one of the terms and conditions of this Contract and any other of the terms or conditions of this Contract, such terms and conditions will take precedence and govern in the following order of priority from highest to lowest:

- (a) any and all Amendments from the most recent to the earliest;
- (b) this Form of Agreement, excluding all Schedules; and
- (c) **[NTD: Additional items will be inserted later]**

**ARTICLE 3
GENERAL REQUIREMENTS**

3.1 Vendor's Security Obligations

The Vendor will ensure that the Software includes a user-based security system which controls access to Modules and functions through individualized user identification codes and passwords in accordance with the Functional Requirements. The Vendor will not install on the Software any Vendor password which is not unique to the City.

3.2 Vendor's General Obligations

Subject to the other terms of this Contract, the Vendor will deliver the Software and perform the Services in accordance with the Vendor's obligations under this Contract all for the Total Purchase Price. If anything additional to the Vendor's obligations under this Contract is requested by the City, such request will be governed by *Article 10 [Change Requests]*, and the Total Purchase Price will be adjusted as set out in *Article 10 [Change Requests]*.

3.3 First Class Standard

The Vendor will at all times maintain a first class standard of care, skill and diligence in performing the Vendor's obligations under this Contract, warranting that the Vendor's obligations under the Contract Documents will be performed to the standard of experienced and skilled professionals in the Vendor's field.

3.4 Vendor has Control/Responsibility

The Vendor will have complete control over its performance of the Services and will direct and supervise and do the work to ensure conformance with the Contract Documents. The Vendor will be solely responsible for all methods, techniques, sequences and procedures in connection with the furnishing of the Software and Services and for coordinating all parts of the performance of this Contract, excluding those parts that are expressly stated in this Contract to be the responsibility of the City.

3.5 Discrepancies

The Functional Requirements have been prepared by the City to describe, in general terms, the criteria that the Vendor must satisfy through the performance of the Services. However, despite *Article 1 [Definitions and Interpretation]*, and in recognition of the Vendor's greater expertise in describing the Services and Requirements, if the Vendor is aware of any discrepancy or deficiency in the description of the Functional Requirements or any omission of criteria which would be detrimental to the achievement of benefits intended to be obtained by the City upon completion of the Project as described by the RFP, the Vendor will notify the City and rectify such a discrepancy, deficiency or omission as required to achieve those benefits as part of the Services.

3.6 Vendor to Report Status

The Vendor will provide the City with monthly status reports regarding the Services. Each report will indicate the percentage complete of the items set out in *Schedule A [Functional Requirements]* and will include such other information as the City may reasonably request.

3.7 Term of the Contract

The term of this Contract will be for the period beginning on the Effective Date and ending on the surrender or cancellation of the perpetual Licence, unless replaced or re-instated in accordance with the terms of this Contract.

ARTICLE 4 INSTALLATION SITE PREPARATION AND PLATFORM

4.1 City to Prepare Installation Sites

The City will, at its sole expense and prior to the first Delivery Date, provide all necessary electrical and other installations and fittings, air conditioning, special flooring, telephone connections and the like, at the Installation Sites which will be required for proper functioning of the Hardware and Software Platform and proper performance of the Services.

4.2 Vendor to Provide Specifications/Approve Hardware/Software Platform

- (a) The Vendor now confirms that the specifications for the Hardware and Software Platform required for the proper functioning of the Software during and after the Project are as set out in *Schedule D [Hardware and Software Platform]*.
- (b) If the City is required to make any modifications or return and replace the Hardware and Software Platform due to its lack of or deficiency in interoperability with the Software or Services, any and all direct, out-of-pocket costs of doing so will be borne by the Vendor, provided that the Vendor will have no such liability if such lack of or deficiency in interoperability is due to any cause that is not within the reasonable control of the Vendor, including the combination of the Software with other software or hardware not supplied by the Vendor, other than the Hardware and Software Platform.

4.3 City Responsible for Hardware and Software Platform

The City will continue to be solely responsible for maintaining and operating the Hardware and Software Platform during the Project.

4.4 Remains Property of City

Despite any other term of this Contract, the Hardware and Software Platform will remain at all times the property of the City and the Vendor will acquire no right or interest in same.

4.5 Interfaces

The City's and Vendor's respective roles and responsibilities for the Interfaces are as set out in *Schedule C [Implementation - Statement of Work]*.

4.6 City Permitted to Replace/Modify Hardware and Software Platform

The City is authorized to replace or modify the Hardware and Software Platform and to replace and attach new peripheral devices to the Software at its option provided such changes do not adversely affect the Software. The City acknowledges that, to the extent that such changes do adversely affect the Software, the Vendor will be released from its obligations under this Contract, but only to such an extent and no further.

ARTICLE 5 VENDOR RESPONSIBILITIES

5.1 General Responsibilities

- (a) Commencing on the Start Dates, the Vendor will provide the Services in accordance with the Contract Documents and complete the Services on or before the Delivery Dates and Finish Dates applicable to those Services as set out in the Implementation Schedule.
- (b) The Vendor's obligations under the Contract Documents have been set out in the Contract Documents following extensive consultations between the parties, to describe the obligations of the Vendor and to the extent that the Vendor's obligations under the Contract Documents fail to expressly state anything that would "reasonably be implied or inferred" in order to comply with the Vendor's obligations under the Contract Documents, the Vendor now agrees that such thing will be deemed to be implied and included in the Total Purchase Price, provided always that the determination of whether or not such thing would "reasonably be implied or inferred" will be made by taking into account the fact that the Vendor is deemed to be the expert in determining the capabilities and limitations of its Software and Services and the City is deemed to be the expert in determining the general business processes for which it requires the Services and the Software.

5.2 Material to be Delivered

The Vendor will deliver the following: [•].

5.3 Specific Responsibilities

Without limiting or derogating from the obligations of the Vendor set out elsewhere in the Contract Documents, the following is a list of specific obligations of the Vendor. The Vendor will and covenants as conditions of this Contract to

- (a) appoint a Vendor Project Manager, who will have full authority for implementing this Contract and who will be the principal point of contact between the City and the Vendor, provided that, if the Vendor Project Manager becomes unable to fulfill this obligation, the Vendor will appoint a successor Vendor Project Manager;

- (b) provide and pre-test all configuration work, as part of the System;
- (c) provide the Documentation;
- (d) provide change management consulting services;
- (e) train groups of designated City personnel as set out in *Schedule G [Training]*;
- (f) provide regular progress reports as required by this Contract;
- (g) supply the Software and Services, complete and fully Vendor tested, as set out in this Contract;
- (h) deliver, install, pre-test and configure the Software and complete the Project Services so that the Software operates and interfaces with the Software and Hardware Platform, and other software as specified in this Contract, and in accordance with the Acceptance Tests, the Implementation Schedule, and in a manner designed to cause minimal disruption to the Operating Hours of the City;
- (i) do everything required by the Contract Documents by the time stipulated in the Contract Documents and to a first class standard;
- (j) in addition to the Functional Requirements, deliver anything else necessary for or incidental to the Functional Requirements, including supplying all labour, supervision, management, overhead, materials, supplies, and all other things necessary for or incidental to the Functional Requirements;
- (k) comply, and will ensure that all of its employees, contractors and agents comply, with all Laws and Regulations in carrying out this Contract;
- (l) restrict its employees, contractors and agents from unduly interfering with the City's business operations when they are working at any Installation Site or Project Office;
- (m) comply with, and ensure that its employees, contractors and agents comply with, the City's standard security procedures to maintain the security of the City's Proprietary Information;
- (n) notify the City of, as appropriate, and seek the City's prior written consent to, any material changes to the Vendor's methodology in the provision of Services;
- (o) be in attendance at any Installation Site or the Project Office at all reasonable times as may be required to provide the Services and to complete the Project in accordance with the Delivery Dates;
- (p) restrict the Vendor's employees, contractors and agents from any unauthorized use of, or from interfering with, software, equipment and other property that is owned by the City, in the City's possession, under the City's control or for which the City is otherwise responsible;
- (q) ensure that all materials, goods and equipment incorporated into the Software or any deliverable hereunder are sourced from suppliers or manufacturers of established reputation engaged in the supply or manufacture of such materials or equipment; and
- (r) pay all of its employees, subcontractors, suppliers and materialmen all amounts properly owing when due and keep the Software free of all liens, charges, encumbrances and adverse claims.

**ARTICLE 6
CITY RESPONSIBILITIES**

6.1 General Responsibilities

Commencing on the Start Dates, the City will provide the instructions, decisions, and comments required of it pursuant to the Contract Documents on or, whenever reasonably practical, before the Delivery Dates and Finish Dates applicable to the City. Without limiting the foregoing, the City will (subject always to *Section 2.1 [Priority of Documents]* and the Implementation Schedule) carry out in a timely, efficient and first class manner, all of its responsibilities and roles specified in the Implementation Schedule.

6.2 Specific Responsibilities

The City will throughout the term of the Project:

- (a) designate a City Project Manager, who will have full authority for implementing this Contract and who will be the principal point of contact between the Vendor and the City, provided that, if the City Project Manager becomes unable to fulfill this obligation, the City will appoint a successor City Project Manager;
- (b) provide all necessary network connections, power and telephone lines in accordance with the specifications as provided by the applicable manufacturers of the Software and Hardware Platform;
- (c) allocate the necessary personnel, including the personnel specified in the Implementation Schedule, funds, facilities and other resources required to carry out its obligations under this Contract in a timely, efficient and first class manner; and
- (d) comply, and will ensure that all of its employees and contractors comply, with all Laws and Regulations in carrying out this Contract.

**ARTICLE 7
TOTAL PURCHASE PRICE AND PAYMENT**

7.1 Payment Only on Performance

Subject to the partial and interim payment obligations of the City as set out in *Schedule J [Payment Schedule]*, the City will have no obligation to pay any money to the Vendor in connection with this Contract unless and until the Vendor has fully and completely complied with all of its obligations required by this Contract to be performed and all covenants on the part of the Vendor are in good standing up to the date that such payment is due.

7.2 Payment Schedule

The City will make payments on account of the Total Purchase Price in the amounts and at the milestones outlined in *Schedule J [Payment Schedule]*, subject to the Holdbacks.

7.3 Payment of Licence Fee

The City will pay the Vendor, in consideration for the Licence, the amounts set out in *Schedule J [Payment Schedule]*, subject to the terms of this Contract.

7.4 Payment Tied to Implementation Schedule

Any delay from the times set out in the Implementation Schedule due to the Vendor not meeting the Implementation Schedule will result in the corresponding payment dates being extended by the length of the delay. For certainty, nothing in this Section modifies either party's rights and obligations pursuant to *Article 22 [Vendor Defaults]*, *Article 23 [City Defaults/Delays]*, *Article 24 [Intellectual Property Protection]* or *Section 28.14 [Unavoidable Delays]*.

7.5 Interest on Late Payments

If either party is in default of any payment required to be made under this Contract, interest will be payable from the due date to the date of payment at the 90 Day LIBOR (London Inter-Bank Offered Rate) plus three percent per annum simple interest calculated monthly, prorated for any periods less than a full month.

7.6 Payment Procedure

The submission of a proper invoice will constitute a condition precedent to the obligation of the City to pay any money under this Contract. For the purposes of this Contract, a proper invoice must comply with the following requirements:

- (a) the invoice must correctly reference the City's Purchase Order number; and
- (b) must be signed by an officer of the Vendor and contain a statement certifying that the Vendor has achieved a specified milestone or specified percentage of completion of same in accordance with the terms of *Schedule J [Payment Schedule]*, and sufficiently describe the specified milestone or percentage of completion of same.

7.7 Prices Set Out in Schedule B [Pricing]

Schedule B [Pricing] lists all Software and Services together with their associated prices. All prices, whether lump sum, unit rate, or otherwise set out in *Schedule B [Pricing]* are fixed and may not be changed by either party except pursuant to *Article 10 [Change Requests]*.

7.8 Total Purchase Price Set out in Schedule S [Licence + Maintenance Status/Metrics]

The Total Purchase Price is fixed and may not be changed by either party except by Change Order pursuant to *Article 10 [Change Requests]*.

7.9 Canadian Currency

All references to currency in the Contract Documents are expressed in terms of lawful money of Canada, and all payments to be made under the Contract Documents will be made in lawful money of Canada in Vancouver, British Columbia.

7.10 Taxes

- (a) *City Liable for HST, etc.* – The prices set out in this Contract are exclusive of all federal, provincial, municipal, or other Canadian government, excise, sales, use, occupational, or like taxes specific to the transactions under this Contract now in force or enacted in the future in respect to amounts payable by the City to the Vendor relating to the Software or Services, all of which the City will be liable to pay to the Vendor wherever the Vendor is required to collect and remit such amount to any governmental authority as a result of this Contract.

- (b) *Co-operate on Rebates/Exemptions* – Each party will on the other's reasonable request and at the other party's expense act diligently and expeditiously to pursue or obtain any certificate of exemption or similar document or benefit where such action or proceeding might result in a rebate or exemption from such amount.
- (c) *Vendor Liable For Corporate, Income, Capital, and Other General Taxes and Other Amounts* – Nothing in this Section or this Contract will make, or be interpreted so as to make the City liable to pay:
 - (i) general (as opposed to those being specific to this Contract) Canadian or foreign taxes, duties, excise, customs, penalties or interest amounts imposed on the Vendor or its Affiliates on account of the Vendor's or its Affiliate's import of goods, services or labour, income, capital, transfers or transactions;
 - (ii) the wages (inclusive of all benefits, withholding taxes, CPP contributions and WorkSafe BC assessments) or fees of any employees, consultants, contractors, agents or other persons employed by it to provide Services; or
 - (iii) all out-of-pocket expenses and disbursements incurred by the Vendor on behalf of the City in the performance of its obligations under this Contract, including travel and living expenses, charges for courier services and long distance telephone services, together with the Vendor's then current administration fee on such expenses.

ARTICLE 8 SERVICE LEVEL/PERFORMANCE GUARANTEES

8.1 Service Levels

The parties acknowledge that service level targets have been established with respect to the Services, Maintenance Services and Software and will be used to assess the performance of the Vendor in delivering the Requirements at an optimal service level for the City. The minimum service levels as well as the optimal service level targets are set forth in *Schedule H [Performance Standard Warranties]*.

[NTD: The vendor will be required to specify the service levels in Schedule H and enter into a Maintenance and Support Agreement in respect of the support and maintenance services to be provided to the City]

8.2 Service Level Reports

The Vendor will prepare and deliver to the City a monthly report on the Vendor's actual performance levels measured against the minimum service levels and optimal service level targets during the Term including the term of the Maintenance and Support Agreement and the cost of preparing and delivering and responding to City enquiries on same will be deemed to be included in the Total Purchase Price.

8.3 Failures to Meet Service Levels

The failure by the Vendor to meet or exceed the minimum service levels or the failure by the Vendor to make commercially reasonable efforts to meet or exceed the optimal service level targets will constitute a default and will become an Event of Default if not rectified in the manner set out in *Article 22 [Vendor Defaults]*.

**ARTICLE 9
LIENS**

9.1 No Liens Permitted

The Vendor will not at any time, before or after receipt of payment, suffer or permit any liens to be registered in the name of the Vendor or its suppliers against the name of the City or the title to any City property, including for further certainty, the City's Proprietary Material or the City's Intellectual Property Rights. The Vendor agrees to fully pay, satisfy and release all such liens.

9.2 Vendor to Provide Proof

If at any time it appears that any lien contrary to this Article exists, the Vendor will furnish evidence satisfactory to the City's Director of Legal Services that all liabilities in respect of such lien have been paid in full and that the lien has been duly released and discharged.

**ARTICLE 10
CHANGE REQUESTS**

10.1 Need to Notify Vendor

- (a) The City Project Manager will, by giving written notice to the Vendor Project Manager with reasonable particulars as to the nature of the request, be entitled to request changes to the Vendor's obligations under this Contract.
- (b) Upon receipt of such notice, the Vendor will, as soon as reasonably practicable after receipt of such notice, prepare a draft Contemplated Change Notice/Change Order so as to inform the City Project Manager in writing of any adjustments to the Total Purchase Price, either increasing or decreasing the Total Purchase Price, and of any adjustments either sooner or later of the Delivery Dates, or of any other changes as that term is used in *Schedule T [Change Order]*, that would be necessitated by such change in the Vendor's obligations under this Contract, or so as to confirm to the City Project Manager in writing that no such adjustments are necessary. All such adjustments must be determined by the Vendor using the pricing rates, terms, metrics, and methodology set out in *Schedule B [Pricing]*, *Schedule C [Implementation - Statement of Work]*, and *Schedule S [License + Maintenance Status / Metrics Table]*.
- (c) If adjustments to the Total Purchase Price or Delivery Dates are necessary and the City confirms in writing (by signing and accepting the terms of the Contemplated Change Notice/Change Order) that such adjustments are acceptable to it, then the change in the Vendor's obligations under this Contract and the change to the Total Purchase Price and Delivery Dates will then take legal effect as a Change Order. Except where *Section 10.2 [Changes where No Amendment is Signed]* below applies, if the City does not confirm in writing that such adjustments are acceptable to it within five Business Days of the date that the Vendor informs the City that such adjustments are necessary, then the City's change request will be deemed cancelled.

10.2 Changes where No Amendment is Signed

If the City has issued a notice under *Section 10.1 [Need to Notify Vendor]* but is of the opinion (in the City's sole discretion) that the Vendor is taking too long to reply or that the reply is not sufficient or where the City disagrees with the Vendor's assessment of how the Vendor's obligations under this Contract, the Total Purchase Price or Delivery Dates should be adjusted, then provided it does so prior to the expiry of the five Business Day period referred to in

Section 10.1(c), and provided it gives prior written notice that it is proceeding pursuant to *Section 10.4 [Disputes over Change Requests]*, then *Section 10.4* will apply.

10.3 Vendor Not to Act on any Informal or Unwritten Change Requests

If the Vendor considers that the City has requested a change in the Vendor's obligations under this Contract but the City has not issued a notice under *Section 10.1 [Need to Notify Vendor]*, then the Vendor must give a written notice to the City prior to acting on such request. The notice shall refer in reasonable detail to the applicable request and state that the Vendor considers the request to be a request to change the Vendor's obligations under this Contract. If the City agrees, then the parties will proceed in accordance with *Section 10.1 [Need to Notify Vendor]*. If the City does not agree, then *Section 10.4 [Disputes over Change Requests]* will apply.

10.4 Disputes over Change Requests

If the City does not agree with the Vendor under *Section 10.1 [Need to Notify Vendor]*, then (subject always to *Section 10.5 [Balancing Parties' Interests During Dispute Over Any Change Request]*) the Vendor will nonetheless promptly act on the request and the parties will attempt to agree on a form of Change Order or failing agreement, the Total Purchase Price and Delivery Dates will remain the same but will be subject to adjustment after the Final Go Live Date if either party elects to refer the matter to arbitration pursuant to *Article 27 [Arbitration]* and the arbitrator(s) determines that such adjustment (up, down, sooner or later) is warranted. The arbitrator will, as part of the arbitration order, include interest from the date that the adjustment to the Total Purchase Price would have been payable or refundable and on the basis of the Delivery Dates that would have applied if the parties had promptly agreed to the changes and paid or refunded the adjustment. Any dispute arising out of *Section 10.3 [Vendor Not to Act on Any Informal or Unwritten Change Requests]* will be determined in accordance with the principle set out in paragraph (b) of *Section 5.1 [General Responsibilities]* as well as this Section and *Section 10.5 [Balancing Parties' Interests During Dispute Over Any Change Request]*.

10.5 Balancing Parties' Interests During Dispute Over Any Change Request

- (a) **Disputes Where Parties Agree Change Request is a Change Request** – Despite *Section 10.4 [Disputes over Change Requests]* above, in no event will:
 - (i) the Vendor be obligated to act on any one or more change requests made by the City under *Section 10.1 [Need to Notify Vendor]* where such change or changes:
 - (A) is a change or are changes that the City agrees are change requests; and
 - (B) would result in the aggregate in a change of more than 25% in the Total Purchase Price (excluding any additional Module or User Rights Licence Fees) or would (using commercially reasonable efforts) result in the delay of the Go Live Date by more than 60 days, and
 - (ii) the City be obligated to pay any amounts other than the Vendor's direct out-of-pocket costs for acting on the disputed change request, pending resolution of the dispute pursuant to *Section 10.4 [Disputes over Change Requests]*.
- (b) **Disputes Where Parties Dispute Whether Change Request is a Change Request** – Despite *Section 10.4 [Disputes over Change Requests]*, in no event will the Vendor be obligated to act on any one or more requests relating to changes in Services made by

the City under *Section 10.4 [Disputes over Change Requests]* where such request or requests are requests that the City is making pursuant to a dispute pursuant to *Section 10.3 [Vendor Not to Act on Any Informal or Unwritten Change Requests]* except to the extent that, pending the resolution of the dispute, the Vendor will without prejudice to any of the City's or Vendor's rights and remedies under this Contract, perform "under protest" such requested changes to the Services to a maximum of 47 Days of Support as defined in *Schedule C [Implementation - Statement of Work]* in the aggregate for all such Services-related requests and the City will then pay "under protest" the Vendor at the rate of **\$75 per hour** for each such hour of Services.

ARTICLE 11 PERFORMANCE SECURITY

11.1 No Letters of Credit or Personal Guarantees

The Vendor and the City now acknowledge that the security for the performance of the Vendor of its obligations under this Contract will be handled by way of the Holdbacks.

11.2 Additional Performance Security Requirements

Despite *Section 11.1 [No Letters of Credit or Personal Guarantees]*, the Vendor now agrees to comply with the following restrictions provided always that upon the issuance of the Certificate of Final Acceptance, the following restrictions will cease to bind the Vendor and will be deemed to be released:

- (a) the Vendor now warrants that [●] (in this Article, the "Shareholder") is the only legal or beneficial shareholder of the Vendor and the Shareholder owns and controls all of the outstanding shares of all classes of the Vendor;
- (b) the Vendor will not, without the prior written consent of the City, such consent not to be unreasonably or arbitrarily withheld, delayed or conditioned, cause or permit any transfer or other disposition of any kind of the ownership (legal or beneficial) of the shares or all or substantially all of the assets or business of the Vendor; and
- (c) the Vendor will not merge, amalgamate or undertake any other material corporate change without the prior written consent of the City, such consent not to be unreasonably or arbitrarily withheld, delayed or conditioned

ARTICLE 12 INSURANCE

[NTD: This section in particular is subject to further review and consideration by the City once more information is known.]

12.1 General Insurance Requirements

Without limiting any of its obligations or liabilities under this Contract, the Vendor and its sub-contractors will obtain and continuously carry during the Term at their own expense and cost, the following insurance coverage with minimum limits of not less than those shown in the respective items set out in this *Article 12 [Insurance]*.

12.2 Insurance Policies

All insurance policies will be in a form and in amounts satisfactory from time-to-time and with insurers acceptable to the City's Director of Risk and Emergency Management and will provide the City's Director of Risk and Emergency Management with 60 days prior written notice of

material change, lapse or cancellation, and such notice must identify the Contract title, number, policyholder, and scope of work.

12.3 Additional Insurance

The Vendor will provide at its own cost any additional insurance which it is required by law to provide or which it considers necessary.

12.4 Other Obligations

Neither the providing of insurance by the Vendor in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Vendor from any other provision under the Contract Documents with respect to liability of the Vendor or otherwise.

12.5 Primary Insurance

The insurance coverage will be primary insurance as respects the City. Any insurance or self-insurance maintained by or on behalf of the City, its Affiliated Organizations, or any of their respective officers, officials, employees, or agents will be excess of this insurance and shall not contribute with it.

12.6 Vendor to Provide Proof

The City acknowledges that Vendor has provided the City with evidence of all required insurance to be taken out in the form of the Certificate of Insurance supported by certified copies of all insurance policies related to this Contract. Such Certificate of Insurance identifies the Contract title, number, policyholder and scope of work and does not contain any disclaimer whatsoever. At all times during the Term, the Vendor must comply with all of its insurance obligations described in this *Article 12 [Insurance]*. Proof of insurance, in the form of additional Certificate(s) of Insurance or certified copies of all insurance policies, will be made available to the City's Director of Risk and Emergency Management at any time during the Term upon request. Approval or acceptance of any Certificate of Insurance or policy of insurance by the City will in no way relieve the Vendor of its other obligations under this Contract.

12.7 Sub-Contractors

The Vendor will provide in its agreements with its sub-contractors clauses in the same form and to the same effect as those in this *Article 12 [Insurance]*. Upon request, the Vendor will deposit with the City's Director of Risk and Emergency Management detailed certificates of insurance for the policies it has obtained from its sub-contractors and a copy of the insurance clauses from those sub-contracts.

12.8 Coverage Only From Authorized Insurers

The Vendor will only obtain such insurance from a company duly registered and authorized to conduct insurance business in the Province of British Columbia.

12.9 Minimum Requirements

The Vendor's minimum insurance obligations are as follows:

- (a) *Commercial General Liability Insurance* - Commercial general liability insurance in sufficient amounts and description to protect the Vendor, its sub-contractors, the City, its Affiliated Organizations, and their respective officers, officials, employees, and

agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Contract, provided that the limit of commercial general liability insurance shall be not less than \$● per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations, and further provided that the deductible per occurrence shall not exceed \$● per occurrence and:

- (i) the policy of insurance shall:
 - (A) be on an occurrence form;
 - (B) add the City, its Affiliated Organizations, and their respective officials, officers, employees and agents as additional insureds,
 - (ii) contain a cross-liability or severability of interests clause; and
 - (iii) extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.
- (b) *Auto Liability Insurance* - The Vendor will ensure that vehicles owned or operated by the Vendor or its sub-contractors in connection with the Contract maintain Third Party Legal Liability Insurance in an amount not less than \$● per occurrence.
- (c) *Professional (Errors and Omissions) Liability Insurance* - The Vendor must maintain a professional (errors and omissions) liability insurance policy which shall remain in full force for the Term of the Project and for a further period of two years following the Project Completion Date. This policy of insurance must:
- (i) protect the Vendor and its sub-contractors, and their respective officers, directors, employees and agents performing the Services against all liability resulting from an error, omission or negligent act in the provision of the Services;
 - (ii) have a limit of not less than \$● per claim, and \$● annual aggregate; and
 - (iii) have a deductible of not more than \$●.
- (d) *Property Insurance* - The Vendor must maintain an all-risks insurance policy covering the Vendor's property of every description. The policy must include a waiver by the insurer of any and all rights to subrogate against the City and those for whom it is in law responsible.

12.10 City May Remedy Vendor's Insurance Defaults

If the Vendor fails to provide, maintain or pay for the insurance required by this *Article 12 [Insurance]*, then the City will have the right, but not the obligation, to (upon prior written notice to the Vendor) provide, maintain and pay for such insurance, in which case the costs of same will, at the City's option, be payable by the Vendor on demand, or the City may deduct such costs from money which is then or later becomes due and payable to the Vendor under this Contract or otherwise.

ARTICLE 13
REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1 Software and Documentation Warranties

The Vendor represents and warrants to the City that:

- (a) the Vendor is the sole owner of all Intellectual Property Rights in and to the Software and Documentation which has been developed solely by employees of the Vendor or independent contractors who have transferred in writing (or will transfer in writing) in respect of future modifications) their ownership rights in the Software to the Vendor, and the Vendor has the right to enter into this Contract and to perform all of its obligations including delivery of the Software and granting of the Licence;
- (b) the Vendor has used commercially reasonable efforts to ensure that the Software delivered to the City under this Contract does not contain any viruses which would materially adversely affect the City's ability to use the Software;
- (c) the Software does not contain any disabling or other device that would allow the Vendor or any third party to in any way reduce or interrupt the use and operation of the Software by the City;
- (d) all software (including the Software, Third Party Software, Documentation, and other materials to be delivered hereunder) will be delivered with the Intellectual Property Rights necessary to permit the City to freely use and operate same in accordance with the terms and conditions of this Contract;
- (e) at the time of commencement of each Acceptance Test, the Software or Documentation being tested will be the agreed-upon Release of such Software or Documentation suitable for operation on the Hardware and Software Platform;
- (f) unless and until validly terminated pursuant to *Section 23.2 [Major City Default]*, the Licence is and will remain at all times in perpetuity free, non-exclusive and clear of all liens, charges and encumbrances, subject always to the City's payment obligations as outlined in *Schedule J [Payment Schedule]*;
- (g) Subject to *Schedule I [Acceptance Tests]*, each Module of the Core Software will operate in accordance with the Functional Requirements for that Module when operated on the Hardware and Software Platform, upon issuance or deemed issuance of the Certificate of Acceptance for that Module;
- (h) the Core Software, Services, Documentation, and Hardware and Software Platform will, upon issuance or deemed issuance of the Certificate of Final Acceptance, be compatible with each other and will operate together; and
- (i) the Core Software and Documentation will, upon issuance or deemed issuance of the Certificate of Final Acceptance and when operated on the Software and Hardware Platform, support the level of activity and volumes set out in *Schedule H [Performance Standard Warranties]* and will otherwise meet the representations and warranties set out in *Schedule H [Performance Standard Warranties]*.

13.2 Vendor-Provided Hardware Warranties **[NTD: Need to expand if applicable]**

13.3 Software and Hardware Platform and Third Party Software Warranties

The Vendor represents, warrants and covenants that:

- (a) if the Hardware and Software Platform (including Third Party Software) supplied by the City requires any extension or upgrade of capability within one year after the issuance of the Certificate of Final Acceptance solely to meet the progression of Software features and capabilities being delivered by the Vendor as a part of its normal Software Release process and the City has no option but to upgrade or extend same or, practically, must acquire such upgrade or extension if the Software is to continue operating in accordance with the Functional Requirements, then the Vendor will supply such Hardware and Software Platform or Third Party Software upgrade or extension without additional charge to the City, and all such upgrades or extensions (and applicable software licences to use them) will become the property of the City;
- (b) until one year after the issuance of the Certificate of Final Acceptance, all upgrades to the Hardware and Software Platform or Third Party Software required to bring the Software into compliance with the Functional Requirements will be provided by the Vendor at no cost to the City;
- (c) the Vendor will provide the City with upgrade requirements for the Hardware and Software Platform and Third Party Software (if any) for each new Release of the Software, and it will be the responsibility of the City to reasonably promptly upgrade same to meet the upgrade requirements;
- (d) during the period from one year after the issuance of the Certificate of the Final Acceptance until five years after the issuance of the Certificate of Final Acceptance, if the Hardware and Software Platform or Third Party Software is not compatible with the Software and the Hardware and Software Platform or Third Party Software has been upgraded to meet the Vendor's then current specifications, then the Vendor will provide any further upgrade necessary to make them compatible with the Software at no cost to the City; and
- (e) the above commitments exclude Hardware and Software Platform and Third Party Software upgrades required solely by:
 - (i) software modules or components added to the Software other than those contemplated by this Contract; and
 - (ii) changes to the Software made by the Vendor (other than pursuant to the Maintenance and Support Agreement) at the request of the City or modifications to the Software made by or on behalf of the City.

13.4 Vendor's Corporate Authority and Other Warranties

The Vendor represents and warrants to the City that, as of the Effective Date, the Vendor:

- (a) has full right, power and authority to enter into this Contract and to perform its obligations under it;
- (b) is not under any obligation, contractual or otherwise, to request or obtain the consent to any person to the transaction or grants contemplated or made herein;
- (c) is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in the Province of British Columbia;
- (d) has necessary corporate power to own its properties and assets and to carry on its business as it is now being conducted and to enter into this Contract;

- (e) is not a party to or bound by any indenture, agreement (written or oral), instrument, licence, permit or understanding or other obligation or restriction under the terms of which the execution, delivery nor performance of this Contract does or will constitute or result in a violation or breach or default; and
- (f) the statements and descriptions regarding the Vendor's and its sub-contractors' reputation and experience in the Proposal are true and accurate and that such persons have the requisite skills, experience and expertise to complete the Project in accordance with the terms of this Contract.

13.5 Exclusion of Other Warranties

THE VENDOR'S WARRANTIES AND REPRESENTATIONS ABOVE AND BELOW ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY TYPE WHETHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES AND CONDITIONS OF DURABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

13.6 City's Warranties

The City represents and warrants to the Vendor that, as of the Effective Date, the City:

- (a) has the full right, power, and authority to enter into this Contract and to perform its obligations under it;
- (b) does not require the consent of any third party to enter into or perform this Contract; and
- (c) will not be in breach of any other contract or legal obligation by entering into or performing this Contract.

13.7 Reliance

The City represents and the Vendor recognizes and agrees that, in entering into this Contract, the City has relied extensively on the information provided by the Vendor in the Proposal and on the representations and warranties set out herein.

ARTICLE 14 MAINTENANCE/SOURCE CODE

14.1 Sign Maintenance and Support Agreement with Contract

Concurrently with the execution of this Contract, the City and the Vendor will enter into the Maintenance and Support Agreement. [NTD: The City and the vendor need to discuss the terms of ongoing support and maintenance and the vendor will be required to specify the service levels in Schedule H and enter into the Maintenance and Support Agreement.]

14.2 Sign Source Code Escrow Agreement

Concurrently with the execution of this Contract, the City and the Vendor will enter into the Source Code Escrow Agreement and the Vendor will cause the escrow agent named in that agreement to execute and deliver the Source Code Escrow Agreement to the City.

14.3 Need to Maintain Hardware and Software Platform

The City will, during the term of the Project, keep its standard maintenance and support agreements with respect to the Hardware and Software Platform in good standing. Except as

otherwise expressly set out herein, the City is solely responsible for the acquisition, maintenance, support and proper operation of the Hardware and Software Platform.

ARTICLE 15 ACCEPTANCE TESTS

15.1 Acceptance Tests Process

The Vendor will deliver the Software, Modules and Documentation and perform the Services so that the Software and Documentation passes all Acceptance Tests to be conducted and successfully completed before the Certificate of Final Acceptance is signed. The Acceptance Tests and the detailed requirements and methodology for each of the Acceptance Tests are set out in *Schedule I [Acceptance Tests]*.

15.2 Acceptance Tests Failure—Defined

If any part of the Software, Modules, Services or Documentation delivered by the Vendor fails to pass successfully any one of the applicable Acceptance Tests as detailed in *Schedule I [Acceptance Tests]*, within the time allotted (including any extension of time granted by the City or permitted by the terms of this Contract), or if the Vendor fails to install the Modules and the Software complete and ready for Acceptance by each applicable Delivery Date, including each Go Live Date (or agreed upon extension thereof), and if the process for remedial action described in *Schedule I [Acceptance Tests]* has not resulted in a complete remedy then, except as otherwise set out in this Contract, the Vendor will be deemed to be in default and *Article 22 [Vendor Defaults]* will apply.

15.3 Delays

If any part of the Software, Modules, Services, or Documentation does not pass any element of any applicable Acceptance Test and as a result, the Delivery Dates, including any Go Live Date outlined in the Implementation Schedule are delayed, the City's obligation to issue any Certificate of Acceptance (and the Vendor's entitlement to any deemed issuance of same) will be delayed by an equal number of days.

15.4 Standard of Review

The City Project Manager will determine on behalf of the City whether or not an Acceptance Test has been passed. The criteria that the City Project Manager must apply and that the Software and Services must meet to successfully pass the Acceptance Tests is specified in *Schedule I [Acceptance Tests]*.

15.5 Correction of Defects/Deficiencies

All deviations from the Functional Requirements identified by the City Project Manager arising from the Acceptance Tests, will be corrected by the Vendor at its cost and the Vendor will use diligent, commercially reasonable efforts to prevent the delay of the issuance of the applicable Certificate of Acceptance as more particularly set out in *Schedule I [Acceptance Tests]*.

15.6 Go Live and Final Acceptance Requirements

The City Project Manager will sign each Certificate of Acceptance and the Certificate of Final Acceptance when, but only when, all of the work defined in *Schedule C [Implementation - Statement of Work]* and acceptance requirements set out in *Schedule I [Acceptance Tests]* for each such Certificate of Acceptance have been completed and met.

ARTICLE 16
LICENCE AND PROPRIETARY MATERIAL

16.1 Software Licence

All Software provided by the Vendor to the City pursuant to this Contract will be governed by the terms of the Licence.

16.2 Grant of Licence

- (a) *Licence* – Subject to the terms and conditions of this Contract, the Vendor now grants and the City accepts a perpetual (except as set out in this Contract), fully paid-up, non-exclusive, non-transferable (except to the extent permitted by this Contract) enterprise licence (the “**Licence**”), free and clear of all liens, charges and encumbrances, to use and permit the use of the Software, Source Code (subject always to the Source Code Escrow Agreement) and Documentation subject to the terms of this Contract.
- (b) *Modules* – The following Modules of the Software are included in the Licence but the City’s rights to use the Software are limited to those Modules and User Rights set out from time to time in *Schedule S [Licence + Maintenance Status/Metrics Table]*:

[NTD: To be filled in later as necessary]

- (i) Any and all other Software (if any) required (but only to the extent required) to provide the functionality listed as “Code A” in *Schedule A [Functional Requirements]* is deemed to be included in the Core Software despite any other term of this Contract.
- (c) **Releases** – All Releases of the Software issued during the term of the Maintenance and Support Agreement are included in the Licence.
- (d) **Source Code** – Subject to the Source Code Escrow Agreement, the Source Code for the Software and all Releases of the Software issued during the term of the Maintenance and Support Agreement are included in the Licence.

16.3 Option to Return Unused Modules/Licences

Where during the term of the Project, the City determines that certain Modules or User Rights are not required, the City may return same on prior written notice which notice will be deemed to take effect as a Change Order and the City will receive a credit for same against the Total Purchase Price in proportion to the Licence Fee for same as set out in *Schedule B [Pricing]*. This right expires following the issuance of the Certificate of Final Acceptance.

16.4 Option to Acquire Additional Modules/User Rights

- (a) *Exercise of Option* - Where, at any time, the City requests delivery of an additional previously unlicensed Module or Seat, the Vendor will, within 30 days of such request deliver to the City the current Release of same in machine-readable media as well as deliver (if it has not already done so) the Source Code for same to either the City or the escrow agent pursuant to the Source Code Escrow Agreement as applicable.
- (b) *Vendor to Invoice:*
 - (i) *Additional Module* - Upon the City's receipt of the additional Module, the Vendor may invoice the City for the additional Module Licence Fee as set out in

Schedule B [Pricing]. Such invoice will be payable by the City within 30 days of the successful implementation or deemed successful implementation of the additional Module by the City as further set out in *Section 16.4(d)* below.

- (ii) *Additional User Rights Only* - Where the City is merely acquiring additional User Rights of a previously implemented Module, the Vendor may invoice the City for same immediately and such invoice will be payable within either 30 days of the City's receipt of the invoice or the at the time designated pursuant to *Schedule J [Payment Schedule]*, whichever is later.
 - (c) *Lower of Schedule B or Market Price Will Apply* - The additional Module Licence Fee set out in *Schedule B [Pricing]*, will be fixed and may not be increased by the Vendor (but will be decreased if necessary to ensure that the City pays no more than the lowest price paid up to that point for that Module by other Canadian government agencies as calculated on a dollar to population served ratio).
 - (d) *Acceptance/Payment* - Where the additional Module is acquired during the term of the Project (and as part of the Services provided by the Vendor for the Project), acceptance and payment will be determined in accordance with *Schedule C [Implementation - Statement of Work]* (as amended by the applicable Services Change Order) and otherwise as set out in this Contract. In all other cases, the City will be given 90 days to implement the additional Module and test and either accept or reject same. If following 90 days from the date of delivery by the Vendor to the City of the additional Module the City has given notice to reject the additional Module, the City will immediately discontinue use of the additional Module and confirm same to the Vendor whereupon:
 - (i) the City will have no rights whatsoever to use the additional Module in any way; and
 - (ii) the City will not be liable to pay the additional Module Licence Fee.
- Where the City gives written notice that it accepts the additional Module or fails to give any written notice of rejection of the additional Module, the City will be deemed to have accepted the additional Module and will then be liable to pay the additional Module Licence Fee invoice within 30 days of the expiry of the 90-day period.
- (e) *Vendor Not Liable for Implementation, etc.* - Despite any other term of this Contract, unless a Change Order or other separate written agreement is entered into with the Vendor, the Vendor will not be responsible or liable for the costs of any configuration work, data migration or other implementation required to implement the additional Module.
 - (f) *Consequential Amendment to Maintenance* - Where pursuant to *Section 16.4(d)* above, the City has or is deemed to have accepted the additional Module, or where additional User Rights have been acquired, the Software as defined in this Contract will be deemed to include the additional Module and User Rights and the Maintenance and Support Agreement will then be deemed to include same as part of the Software required to be supported and maintained by the Vendor under the Maintenance and Support Agreement subject to the following specific provisions:
 - (i) For additional Modules acquired (whether during or after the term of the Project), no Maintenance Costs will be payable before the first year following the date on which the City accepts or is deemed to have accepted the additional Module.

- (ii) For any additional User Rights acquired independently of any additional Module during the term of the Project, Maintenance Costs will become payable at the same time as the Maintenance Costs for the other User Rights for that Module as set out in *Schedule B [Pricing]* and *Schedule J [Payment Schedule]*.
- (iii) For any additional User Rights acquired independently of any additional Module after the term of the Project, Maintenance Costs will become payable following their inclusion in the count taken for an Audit Date.
- (iv) Following the one year free maintenance period set out in *Section 16.4(f)(i)* above, the City will then commence payment of the Maintenance Costs in the first Billing Period following the Audit Date whereby the User Rights relating to that new Module are included in the count on that Audit Date.
- (g) *Licence/Maintenance Amendment* - The parties will then (in accordance with the applicable Change Order which effected the acquisition of the additional Module(s)/User Rights) promptly amend this Contract by way of an Amendment which deletes and replaces *Schedule S [Licence + Maintenance Status/Metrics Table]* to reflect the revised Licence and Maintenance status.

16.5 Enterprise Licence

The Licence is an “enterprise” licence and, accordingly, the following terms and conditions apply:

- (a) *Permitted Transfers and Expansions of Licence* – Provided always that:
 - (i) the City gives notice, pays the additional licence fee (if applicable) and otherwise complies with this Licence; and
 - (ii) the Software has the necessary operability to accommodate the same,
- (b) there is no limit on the number of users which the City may utilize under the Licence, provided that this shall not be construed as an extension of the performance standard warranty set out in *Section 13.1(i)*.
- (c) *Balancing City’s Use with Vendor’s Competitive Interest:*
 - (i) General Restriction Against Uses Competitive with Vendor – Except where and then only to the extent expressly permitted by this Contract, the City may not:
 - (A) use the Software for a service bureau application; or
 - (B) sublicense, share, rent, or permit access to, the Software, Documentation or Source Code.
 - (ii) Affiliated Organization Exemption from General Restriction – The City’s Affiliated Organizations are authorized to use the Software and Documentation provided that:
 - (A) the Affiliated Organization’s use is not an unauthorized exportation of any Vendor’s Proprietary Material under applicable laws and regulations;
 - (B) each Affiliated Organization uses the same database instance(s) as the City when using the Software; and

- (C) in no circumstances may the Affiliated Organization have access to the Source Code.
- (iii) Business Third Party Exemption from General Restriction – The City’s Business Third Party Users are authorized to access the Software and Documentation provided that:
 - (A) in no circumstances may the Business Third Party have access to the Source Code;
 - (B) in no circumstances may the Business Third Party use the Software to operate or manage the business of such Business Third Party;
 - (C) each Business Third Party uses the same database instance(s) as the City when accessing the Software; and
 - (D) the Business Third Party access is not an unauthorized exportation of any Vendor’s Proprietary Material under applicable laws and regulations.
- (d) *City Obligations Respecting Affiliated Organizations/Business Third Party* – With respect to each Affiliated Organization and Business Third Party that accesses the Software and Documentation, the City is liable to the Vendor for the acts and omissions of each such Affiliated Organization or Business Third Party as if they were the City’s acts or omissions, provided always that the City’s liability therefor is limited to only those Losses which are direct (as opposed to indirect or consequential) and subject always to a cumulative maximum limit equal to the aggregate amount of payments which the City is obligated to make to the Vendor under this Contract.
- (e) *Administrative/Organization Changes*
 - (i) If the City:
 - (A) enters into a merger, amalgamation, consolidation or like combination with another municipal organization(s) to create either an expanded city or a new entity;
 - (B) enters into a regional program with the Greater Vancouver Regional District (Metro Vancouver), Greater Vancouver Water District, Greater Vancouver Hospital District, Greater Vancouver Sewerage and Drainage District, South Coast British Columbia Transportation Authority (TransLink), or any other entity that represents or involves other local regional or municipal organizations; or
 - (C) is authorized or required by any provincial or federal government legislation to provide services to any public entity (to the extent that an Affiliated Organization exemption from the general restriction set out above does not apply),
 - (ii) then the rights under this Contract as between the Vendor and the City are fully transferable and expandable, at the City’s sole option, subject to the following requirements.
 - (iii) If all relevant entities already own licences to the Software and are under maintenance contracts with the Vendor, no additional licence or maintenance fees will be payable.

- (iv) If any entity does not already own a licence to the Software and is not a party to a maintenance agreement with the Vendor, then an additional licence and maintenance fee will be payable within 90 days of the event referred to above, unless the parties cannot agree in which event the matter will be referred to arbitration pursuant to *ARTICLE 27 [Arbitration]* and the arbitrator will determine a fair licence and maintenance fee which fee will not exceed the lesser of:
 - (A) the fair market value of a licence and maintenance agreement similar to the Licence and the Maintenance and Support Agreement if granted to a local government having a similar size as the entity without an existing licence and maintenance agreement; and
 - (B) the amounts payable by the City under this Contract for adding the requisite number of Modules and/or User Rights necessary to accommodate the new uses of the Software.
- (v) Prior to effecting any transfer under this Subsection, the City must obtain a legally enforceable covenant from the assignee binding it to the terms of this Contract in a form approved by the Vendor acting reasonably and expeditiously.
- (f) *Municipal Service Bureau Exemption* – From time to time the City may decide to provide operational services to other municipal organizations. This Contract does not in any way prevent the City from using the Software to service these requirements, nor does it allow for any additional payment to the Vendor for such use of the Software, provided always that the City complies with the applicable terms of this Contract in respect to additional Modules or User Rights (and with respect to any use by the recipient organization, the City causes such recipient organization to enter into a legally binding agreement with the City and the Vendor substantially in the form of *Schedule M [Authorized Affiliated Organization Agreement]*).
- (g) *Public Access Exemption* – As part of the Licence, the City may make available to members of the public access to information and the transaction of the City's business with those members of the public through the Software for which the City may charge a fee. Except as set out in *Schedule B [Pricing]*, no additional licence fee will be payable to the Vendor in respect of the public's access, use and benefit of the Software.

16.6 Software Copies—Restrictions/Procedures on Use

- (a) *Copies for Non-Productive Use* – Subject to payment of the applicable Licence Fee set out in *Schedule B [Pricing]*, the City is licensed to install a reasonable number of copies of the Software for non-productive use onto the Hardware and Software Platform.
- (b) *Copies for Archive or Back-up Purposes* – The City may make one copy of the Software for archive purposes and such number of back-up copies of the Software as is consistent with the City's normal periodic back-up procedures. The City must maintain a log of the number and location of all originals and copies of the Software at all times. Despite any other term of this Contract, no additional Licence Fee will be payable to the Vendor in respect of this right.
- (c) *Protection of Vendor's Proprietary Rights on each Copy* – The City must include the Vendor and its licensors' copyright, trademark, service mark and other proprietary notices on any complete or partial copies of the Software, Documentation, Source Code

or other Vendor's Proprietary Material in the same form or location as the notice appears on the original work.

16.7 Documentation Copies – Restriction/Procedures on Use

The City retains the right to produce such copies of the Documentation (in whatever media) as are reasonably required for the City's permitted uses of the Software, provided always that any such reproduction, whether in whole or in part, must contain any Vendor proprietary notices contained in the original. The City may back-up the electronic copies of the Documentation and may place electronic copies on the City LAN or Intranet for use of City staff in the performance of their duties.

16.8 Modifications and Extensions

- (a) *Right to Modify and Extend* – The City may make modifications and extensions to the Software. The City shall follow the Vendor's then current prescribed standard procedures prior to making such modifications.
- (b) *City Ownership* – If the City independently develops any modifications or extensions without the Vendor's material participation, the City will have all right, title and interest in and to such extensions or modifications subject always the Vendor's rights in the original Software.
- (c) *City/Vendor Ownership* – If the Vendor develops any modifications or extensions jointly with the City, the modifications or extensions and all rights to same including moral rights will be the exclusive property of the Vendor, and the City will not assign, by operation of law or otherwise grant either expressly or impliedly any right, title or interest or licence to the modifications or extensions to any third party. The City will, however, be entitled to use such modifications and extensions developed with the City under this Contract and such modifications and extensions will be deemed to be included as part of the Software and deemed to have been licensed to the City under the Licence (and therefore included in the Total Purchase Price).

16.9 Future Versions of Third Party Software

If the City, at any time, decides to utilize any Vendor-approved third party software which the City has acquired directly from any third party in order to support and interoperate with the Software or the Modules of the Software then Licensed to the City, and such third party software is then interoperable with the Software or those Modules of the Software then Licensed to the City, then the Vendor will provide such version of the Software as is then commercially available in the market place as the City requires, all without payment of any additional licence fees to the Vendor, provided always that the City's use of such replacement version of the Software will be subject to the same terms and conditions as the Licence and Maintenance and Support Agreement.

16.10 City Owns Other Deliverables

Unless otherwise specified in writing, upon payment therefor in accordance with this Contract, the Vendor now assigns to the City any and all rights (including Intellectual Property Rights), title and interest, including, inventions, whether patentable or not, copyrights, trade secrets and other proprietary rights to the Services, Maintenance Services or otherwise with respect to this Contract. The Vendor will give the City reasonable assistance, at the City's expense, to perfect the assignment of the rights, title and interest in and to such materials to the City.

Notwithstanding the foregoing, the City acknowledges that such materials may include data, modules, components, designs, utilities, subsets, objects, program listings, processes, tools,

methodologies, models, diagrams, scripts, templates, analysis frameworks, leading practices and specifications (in this Section, “**Technical Elements**”) owned or developed by the Vendor prior to, or independently from, this Contract. The Company retains all rights to the Technical Elements excluding any modifications or improvements made to the Technical Elements during or as a result of this Contract. Accordingly, if any such material contains any Technical Elements, the Company now grants to the City a perpetual, fully paid-up limited licence to use such Technical Elements for the same purposes and to the same extent only as the City may use the Software.

16.11 Protection of Vendor’s Proprietary Rights

- (a) *Vendor’s Proprietary Material* – The City is granted only the right to use Vendor’s Proprietary Material pursuant to this Contract and does not acquire any ownership rights or title in or to the Vendor’s Proprietary Material or that of its respective licensors. The Vendor retains for itself, and the City acknowledges that the Vendor so retains, all ownership rights in and to the Vendor’s Proprietary Material.
- (b) *City to Assist in Protection of the Vendor’s Proprietary Material* – In order to protect the rights of the Vendor and its licensors in the Vendor’s Proprietary Material, the City agrees as follows:
 - (i) the obligations of this Section will survive the termination of this Contract;
 - (ii) the City agrees to take reasonable steps and the same protective precautions to protect the Vendor’s Proprietary Material from disclosure to third parties as it does with City’s Proprietary Material and to take all reasonable precautions consistent with generally accepted standards in the data processing industry to safeguard the confidentiality of such information;
 - (iii) the City agrees to take appropriate action by instruction, contract and otherwise with its employees and contractors to inform them of the trade secret, proprietary, and confidential nature of the Vendor’s Proprietary Material and the updates and enhancements disclosed to the City under this Contract, and to obtain their compliance with the terms of same and the City will be liable to the Vendor for any breach by any such employees or contractors of their obligations of confidentiality in respect of Vendor’s Proprietary Material and the updates and enhancements disclosed to the City under this Contract;
 - (iv) the City will not without the Vendor’s prior written consent, disclose, provide or make available any Vendor’s Proprietary Material in any form, to any person, except to its bona fide employees, officers, directors or third parties including Affiliated Organizations and Business Third Parties whose access is necessary to enable the City to carry out the intent of this Contract;
 - (v) the City will, prior to disclosing any Vendor’s Proprietary Material to any third party, obtain from that third party a written acknowledgment that the third party will be bound by this Contract with respect to the Vendor’s Proprietary Material;
 - (vi) the City will not remove, alter, or obliterate any copyright, trademark or service mark or other proprietary notices from any Vendor’s Proprietary Material; and
 - (vii) the City acknowledges and agrees that it may receive Vendor’s Proprietary Material from the Vendor or its licensors through training, maintenance and

third party consulting or other means and as a result of the provision of Services pursuant to this Contract.

- (c) *Vendor's Proprietary Material Confidential* – The City recognizes and agrees that all Vendor's Proprietary Material and enhancements or updates of same which are provided to the City by the Vendor:
 - (i) are considered by the Vendor to be trade secrets of the Vendor;
 - (ii) are furnished by the Vendor to the City in confidence;
 - (iii) contain proprietary and confidential information; and
 - (iv) the Vendor's placement of a copyright notice will not be construed to mean that such portion has been published and will not derogate from any claim that such portion is a trade secret or contains proprietary and confidential information of the Vendor.

16.12 Protection of City's Proprietary Material

- (a) *Vendor to Protect All City Records* – The City retains for itself, and the Vendor acknowledges that the City so retains, ownership and rights of ownership to all City's Proprietary Material including the following segregate category of City's Proprietary Material, which segregate category is comprised of all records entered into the Software Database or created by the Software (the "City Records"). The Vendor will not, without the City's express prior written consent, disclose, copy or use, or permit the disclosure, reproduction or use of, any City Records, except only to the extent necessary for the Vendor to carry out contracted work for the City, and the Vendor will not transfer, disclose or provide access to any City Records to any other party except:
 - (i) only to the extent necessary for the performance of this Contract;
 - (ii) only to those individuals who have a "need to know" the City Records in order to carry out this Contract; and
 - (iii) only to individuals located at the time of access within Canada.
- (b) *Removal on Request* – The Vendor agrees upon request in writing from the City to immediately and permanently remove all City Records, electronic or otherwise, from any files, servers, drives or other storage facilities or devices in the Vendor's possession or control, except to the extent that where such removal would negatively affect the Vendor's ability to perform its other obligations under this Contract, the Vendor will nonetheless comply
- (c) *Vendor to Assist in Protection of the City's Proprietary Material* – In order to protect the rights of the City and its licensors in the City's Proprietary Material, the Vendor agrees as follows:
 - (i) the obligations of this Section will survive the termination of this Contract;
 - (ii) the Vendor agrees to take all reasonable steps and the same protective precautions to protect the City's Proprietary Material from disclosure to third parties as it does with Vendor's Proprietary Material and to take all reasonable precautions consistent with generally accepted standards in the data processing industry to safeguard the confidentiality of such information;

- (iii) the Vendor agrees to take appropriate action by instruction, contract and otherwise with its employees and contractors to inform them of the trade secret, proprietary, and confidential nature of the City's Proprietary Material disclosed to the Vendor under this Contract, and to obtain their compliance with the terms of same and the Vendor will be liable to the City for any breach by any such employees or contractors of their obligations of confidentiality in respect of City's Proprietary Material disclosed to the Vendor under this Contract;
 - (iv) the Vendor will not without the City's prior written consent, disclose, provide or make available any City's Proprietary Material in any form, to any person, except to its bona fide employees, officers, directors or third parties whose access is necessary to enable the Vendor to carry out the intent of this Contract;
 - (v) the Vendor will prior to disclosing any City's Proprietary Material to any third party, obtain from that third party a written acknowledgment and agreement that the third party will be bound by this Contract with respect to the City's Proprietary Material;
 - (vi) the Vendor will not remove, alter, or obliterate any copyright, trademark or service mark or other proprietary notices from any City's Proprietary Material; and
 - (vii) the Vendor acknowledges and agrees that it may receive City's Proprietary Material from the City or its licensors through training, maintenance and third party consulting or other means and as a result of the provision of Services pursuant to this Contract.
- (d) *City's Proprietary Material Confidential* – The Vendor recognizes and agrees that all City's Proprietary Material provided to the Vendor by the City:
 - (e) are considered by the City to be trade secrets of the City;
 - (f) are furnished by the City to the Vendor in confidence;
 - (g) contain proprietary and confidential information; and
 - (h) the City's placement of a copyright notice will not be construed to mean that such portion has been published and will not derogate from any claim that such portion is a trade secret or contains proprietary and confidential information of the City.

16.13 Exceptions to Non-Disclosure

For the purposes of this Contract, Proprietary Material of either party (in this Section, the "Owner") will not include information that, as proven by the party disclosing same (in this Section, the "Discloser") through written evidence,

- (a) at the time of disclosure by the Discloser was already in the public domain;
- (b) after disclosure by the Discloser, is published or otherwise becomes part of the public domain through no act or omission of the Discloser; and
- (c) was known to the Discloser prior to its receipt from the Owner and was not acquired, directly or indirectly from the Owner or anyone on its behalf.

Neither party will be in breach of its obligations herein with respect to the Proprietary Material of the other party if it is ordered to disclose such Proprietary Material by a Court or by a regulatory, governmental or other similar authority of competent jurisdiction. Such disclosure shall not, in and of itself, change the confidential nature of the Proprietary Material so ordered to be disclosed and the party being ordered to disclose will immediately provide the Owner with notice that it has been required to disclose the Proprietary Material and in any event as soon as possible and will provide reasonable assistance to the Owner in any attempt by the Owner to block, restrict or limit the extent of such mandatory disclosure.

**ARTICLE 17
WORKERS' COMPENSATION BOARD**

17.1 Maintain Coverage – General

The Vendor will carry and pay for full WorkSafeBC coverage for itself and all of its personnel engaged in or on the Services, failing which the City has the unfettered right to set off the amount of any unpaid premiums and assessments for such WorkSafeBC coverage against any amounts owing by the City to the Vendor, provided that the City has given prior written notice to the Vendor that the City intends to exercise such right of set off and the Vendor has not remedied the failure within five Business Days following the receipt of such notice. The City will have the right to withhold payment under this Contract until the WorkSafeBC premiums, assessments or penalties in respect of the Services have been paid in full.

17.2 Provide Evidence of Coverage—General

At any time and from time to time, on the request of the City, the Vendor will provide the City with the Vendor's WorkSafeBC registration number and a letter from the WorkSafeBC confirming that the Vendor is registered in good standing with the WorkSafeBC and that all assessments have been paid to date prior to the City having any obligation to pay any invoice under this Contract. The Vendor will indemnify the City and hold harmless the City from all manner of Losses arising out of or in any way related to unpaid WorkSafeBC assessments owing from any person or corporation engaged directly or indirectly by the Vendor in the performance of the Services or arising out of or in any way related to their failure to observe safety rules, regulations and practices of the WorkSafeBC, including penalties levied by the WorkSafeBC.

17.3 Special WorkSafeBC Requirements Where Services Are Provided on City Sites

With respect to all Services provided by the Vendor on the Installation Sites, in the Project Office or on any other City sites, the Vendor is now appointed and now accepts appointment as the "prime contractor" as defined by the WorkSafeBC Rules for the purposes of this Contract, but only with respect to the Vendor's and the Vendor's sub-contractor's employees and only with respect to WorkSafe Rules that apply to their conduct independently of the City's compliance with WorkSafe Rules that apply to the condition or contents of Installation Sites, Project Office or other City sites.

**ARTICLE 18
OCCUPATIONAL HEALTH AND SAFETY**

18.1 Must Conform

Each party and its sub-contractors must conform to all occupational health and safety Laws and Regulations.

18.2 OHS Indemnity

Without limiting the general scope of the other indemnities granted within this Contract, each party (the “**Indemnifier**”) will indemnify and save harmless the other (the “**Indemnitee**”) harmless from and against any Losses suffered or incurred by the Indemnitee by reason of failure of the Indemnifier, its agents or employees, or any sub-contractors of the Indemnifier, its agents or employees to comply or ensure compliance with the occupational health and safety Laws and Regulations mentioned above.

18.3 Limitation of Liability

Despite *Section 18.2 [OHS Indemnity]*, neither party will be liable for any Losses other than the direct out-of-pocket Losses and under no circumstance will either party be liable under this *Article 18 [Occupational Health and Safety]* for any Losses on account of lost profits, lost revenue, or any other form of economic loss.

ARTICLE 19 SUB-CONTRACTORS

19.1 Consent Required for Sub-Contractors

The Vendor now confirms that it has no intent to utilize any sub-contractors in connection with the performance of this Contract other than as set out in *Schedule E [Sub-Contractors]*. Except as set out in *Schedule E [Sub-Contractors]*, the Vendor will not engage any sub-contractor in connection with the performance of its obligations under this Contract without the prior written consent of the City, such consent not to be unreasonably or arbitrarily withheld, delayed or conditioned.

19.2 Vendor Responsible for Sub-Contractors

The Vendor will be fully responsible to the City for acts and omissions of its sub- contractors and all other persons directly or indirectly retained or employed by the Vendor in the performance of this Contract in the same manner and to the same extent as the Vendor. The Vendor will be solely responsible for paying the fees and expenses of all sub-contractors engaged by them in connection with the Services and the City will have no liability in connection with same.

19.3 No Contract Formed Between City and Sub-Contractors

Nothing contained in this Article or in any other provision in any of the Contract Documents will create any contractual relations between any sub-contractor of the Vendor and the City, save that the City will receive the benefit of all warranties set out in this Contract regardless of whether the Software or Services were supplied by the Vendor, its sub-contractors, employees, or any other agent of the Vendor.

ARTICLE 20 PROJECT TEAM MANAGEMENT

20.1 Team Composition

Subject to *Section 20.2 [Team Substitutions]*:

- (a) the Vendor will furnish all Vendor Project Team Members required to perform the Services, and all such personnel will be competent and qualified to perform the Services;

- (b) if specific personnel have been identified in *Schedule F [Key Personnel]*, the Vendor will utilize only those Vendor Project Team Members therein identified;
- (c) the parties now confirm and agree that the key personnel listed in *Schedule F [Key Personnel]* have been accepted by the City;
- (d) the City will utilize only those City Project Team Members which satisfy the roles and responsibilities described in the Contract Documents; and
- (e) the City and Vendor will mutually review the size and composition of its Project Team Members on a periodic basis to verify whether or not such Project Team Members are being deployed in accordance with this Contract and to implement the necessary adjustments or corrective action, if required.

20.2 Team Substitutions

Except for substitutions required by circumstances not within its reasonable control:

- (a) the Vendor may not make substitutions of its Vendor Project Team Members without the prior written consent of the City Project Manager, whose consent will not be unreasonably or arbitrarily withheld, delayed or conditioned; and
- (b) the City may make substitutions of City Project Team Members, but if such substitutions are made without prior notice to and consultation with and consent of the Vendor Project Manager, then the Vendor will be released from its obligations under this Contract to the extent that such substitution adversely affects or delays the Vendor's ability to perform the Services.

For the purposes of this Section, "substitutions required by circumstances not within its reasonable control" mean substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract but expressly exclude situations where the Vendor Project Team Member is called upon to perform services for another client of the Vendor or its affiliates and situations where the City Project Team Member is assigned to work on another project of the City.

20.3 Substitution Requests

The Vendor and the City may, with stated reasons and acting reasonably, request that the other replace a Project Team Member. Each of the City and Vendor will, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.

20.4 Cost of Substitutions

Regardless of whether or not the City consents to a substitution, or requests a substitution, the Vendor will ensure that there is no delay or increase in the Total Purchase Price on account of a replacement of the Vendor Project Team Members and will ensure that the replacement Vendor Project Team member has been sufficiently briefed by the Vendor and is able to carry out the replaced Vendor Project Team Member's tasks with at least the same calibre and efficiency as such replaced Vendor Project Team Member. The City and Vendor agree that the maximum transition period sufficient to adequately brief the replacement Vendor Project Team Member shall be no more than two Business Days.

20.5 Conduct Standards

On the written request of the City Project Manager, the Vendor will immediately cease the use of any individual for the performance of the Services which the City Project Manager has reason to believe is unsuitable for the performance of the Services including but not limited to:

- (a) the loss of or failure by that individual to obtain any Security Clearance (as defined below);
- (b) intoxication;
- (c) use of foul, profane, vulgar or obscene language or gestures;
- (d) solicitation of gratuities or tips from any person for services performed under the Contract Documents;
- (e) wilful, negligent or reckless action in disregard of safety or sanitary requirements or regulations; or
- (f) any action which may constitute a public nuisance or disorderly conduct.

The Vendor will promptly comply with each such request and will satisfy the City that the individual has been removed from further involvement with the performance of the Services. For the purposes of this Section, “**Security Clearance**” means the security clearance criteria applied by the City from time to time to City and third party personnel who, as part of their duties, require access to security restricted areas, facilities or information.

20.6 Independent or Dependent Contractors

- (a) Subject to *Article 19 [Sub-Contractors]*, the Vendor confirms that it does not intend to utilize any independent or dependent contractors to perform the Services, except for individual Project Team Members who may be retained by Vendor on an independent or dependent contractor basis rather than a contract of employment basis.
- (b) If an independent or dependent contractor is used by the Vendor under this Contract, the Vendor will legally bind such contractor to comply with this Contract.
- (c) Nothing in any of the Contract Documents will create any contractual relationship between a contractor of Vendor and the City.

20.7 City Resources

The City acknowledges that the Vendor’s performance of the Services may be adversely affected if the City fails to provide the types and numbers of Project Team Members described or contemplated by the Contract Documents, including the Implementation Schedule.

20.8 Vendor Project Manager

The Vendor Project Manager shall be available during Operating Hours of the City as the principal contact between the parties. The Vendor Project Manager shall be designated not later than the Effective Date. If the Project Manager becomes unable to fulfill this obligation, the Vendor shall immediately appoint another of equal authority.

**ARTICLE 21
INDEMNITY AND LIABILITY**

21.1 Indemnity for Personal/Property Loss

Each party (the “Indemnifier”) will indemnify and save the other party and its respective officers, employees and agents (collectively, the “Indemnitee”) harmless from and against all Losses on account of any damage to property or injury (including death) to any person (including damage or injury to the Indemnitee) which may be caused or be alleged to have been caused as a direct or indirect result of any default, willful misconduct or negligent act or omission of the Indemnifier or the Indemnifier’s officers, employees or agents, in the performance of the Indemnifier’s obligations pursuant to this Contract.

21.2 Releases

- (a) The Vendor now accepts the Project Office, Installation Sites, and all other City sites on an “as is” basis and so now assumes all risk of damage or injury to the Vendor’s officers, employees, and agents, from whatever cause.
- (b) Subject to Section 21.1 [Indemnity for Personal/Property Loss], the Vendor now releases the City from all liability for any Losses arising from personal injury, physical sickness, disease (including personal discomfort, illness and damage to reputation), or loss or destruction of or physical damage to personal property arising from:
 - (i) General Accidents – any acts or omissions of the City or its contractors or employees; or
 - (ii) Accidents on the Site – any occurrence on or about City premises, including by way of example only, and without limiting the general scope of this Section:
 - (A) lack of repair, collapse of any building or improvement on City premises;
 - (B) the leakage or explosion of water, gas, sewer, steam, electricity, electromagnetic or any other form of radiation, energy, waves or signals;
 - (C) the presence or escape of asbestos or any other hazardous, noxious, or restricted substance; or
 - (D) theft, damage or misappropriation of personal property.

21.3 Liability Limited

Each party’s liability in respect of all Losses of the type described in *Section 21.1 [Indemnity for Personal/Property Loss]* is limited to the amount of insurance which such party’s insurer pays out, less any deductible payable by the insured, as a result of such Losses, or would have paid out had such party complied with *Article 12 [Insurance]*.

21.4 Vendor’s Limitation on Liability for Software/Services Defaults

Despite any other term of this Contract (except in respect of *Article 17 [Workers Compensation Board]*, *Article 18 [Occupational Health and Safety]*, *Section 21.1 [Indemnity for Personal/Property Loss]*, *Section 22.3 [Major Vendor Defaults]* and *Article 24 [Intellectual Property Protection]*), the total cumulative aggregate liability of the Vendor and its suppliers and their respective subsidiaries, affiliates and parent corporations and each of their

respective directors, officers, employees, contractors and agents (collectively the “**Vendor Indemnifiers**”) in respect to all Losses arising with respect to the Software (excluding Intellectual Property Rights and infringements), the Services and otherwise arising out of this Contract will not exceed the greater of

- (a) the amount of insurance proceeds less the applicable deductible paid out by the Vendor Indemnifiers’ insurers with respect to such Losses; and
- (b) the Total Purchase Price,

regardless of the cause of action, including contract (including fundamental breach), tort (including negligence), strict liability or otherwise.

21.5 City’s Limitation on Liability for Payment Defaults

Despite any other term of this Contract (except in respect of an Intentional City Fundamental Breach), the total cumulative aggregate liability of the City and its suppliers and their respective subsidiaries, affiliates and parent corporations and each of their respective directors, officers, employees, contractors and agents (collectively the “**City Indemnifiers**”) in respect to all Losses arising with respect to the purchase by the City of the Software (excluding Intellectual Property Rights and infringements) and Services arising out of this Contract will not exceed the greater of:

- (a) the amount of insurance proceeds less the applicable deductible paid out by the City Indemnifiers’ insurers with respect to such Losses; and
- (b) the Total Purchase Price,

regardless of the cause of action, including contract (including fundamental breach), tort (including negligence), strict liability or otherwise.

21.6 Parties Not Liable for Indirect Losses

Despite any other term of this Contract (except in respect of an Intentional City Fundamental Breach, *Article 17[Workers Compensation Board]*, *Article 18 [Occupational Health and Safety]*, *Section 21.1 [Indemnity for Personal/Property Loss]*, *Section 22.3 [Major Vendor Defaults]*, *Article 24[Intellectual Property Protection]* and a breach by the Vendor of *Section 28.16 [Publicity and Marketing]*), neither the City nor the Vendor, nor any of their respective affiliates, subsidiaries, parent corporations, any of their parent corporation’s affiliates or subsidiaries, including their officials, officers, directors, employees, contractors or agents, will be liable to or through the other for any Losses which are in the nature of indirect, incidental, special, consequential or punitive damages (including, but not limited to, lost profits, lost revenue or failure to realize expected savings) sustained or incurred in connection with the City’s failure or delay in the payment nor for the Vendor’s failure to deliver the Software or perform the Services or otherwise arising out of this Contract, regardless of the action, including contract (including fundamental breach), tort (including negligence), strict liability or otherwise, and whether or not such damages are foreseeable and whether or not the other party is advised of the possibility of such Losses arising.

21.7 Data Corruption or Loss

To the extent that the Vendor is responsible for any loss or corruption of any data of the City, the Vendor will promptly restore or recreate such data (within the timeframes required by the Implementation Schedule) and, if it is in default of such obligation, the Vendor will be responsible for the City’s reasonable, direct, out-of-pocket costs (to the limit described in *Section 21.4 [Vendor’s Limitation on Liability for Software/Services Defaults]*) to restore or

recreate such Data, but in no event will the Vendor be responsible for any indirect, incidental, consequential, special or punitive damages suffered or incurred by the City as a result of such lost or corrupted data.

21.8 Interest Liability Outside of Liability Limits

The limitations on liability set out in this Article do not apply to each Party's liability to pay interest on any overdue amount that is payable under this Contract.

ARTICLE 22 VENDOR DEFAULTS

22.1 Event of Default—Defined

Each of the following breaches by the Vendor will constitute an “Event of Default” entitling the City to exercise the remedies set out in *Section 22.2 [Default Remedies on Vendor's Default]* below:

- (a) at any time, the Vendor is in default of an obligation to pay the City money and the City has notified the Vendor in writing that the Vendor is in default and the Vendor has not paid the money in full with interest within five Business Days of such notice;
- (b) at any time, the Vendor is in default of its obligations under this Contract (other than a failure to pay money) and the City has notified the Vendor in writing that it is in default of such obligations under this Contract and:
 - (i) the default is of a nature that with reasonable diligence could have been remedied within seven (7) Business Days of such notice; or
 - (ii) the default is of a nature that with reasonable diligence requires more than seven (7) Business Days to remedy but the Vendor has not promptly and continuously made reasonable efforts to remedy the default, following receipt of the notice;
- (c) Despite Section 22.1(a), the Software or Services fail to conform to the Vendor's obligations under this Contract and the correction process and timeframe referred to in Schedule I [Acceptance Tests] has been completed and such failure has materially impacted or will materially impact the Implementation Schedule.

22.2 Default Remedies on Vendor's Default

Despite *Article 27 [Arbitration]*, if there is an Event of Default as defined in *Section 22.1 [Event of Default—Defined]*, the City has the option and right, but no obligation, to exercise any or all or any combination of the following remedies without in any way limiting or prejudicing any of the City's other options or remedies at law or in equity or under any other term of this Contract (for example those with respect to the Holdback as set out in *Schedule J [Payment Schedule]*):

- (a) the City may sue for the recovery of all Losses while requiring the Vendor to continue with performance of this Contract, but may not retain any greater portion of the Holdback than is expressly permitted pursuant to *Schedule C1 [Payment Schedule]*;
- (b) the City may, to the extent that any Software or Services have been delivered and installed, retain all or any part of such Software and Services, and reject the balance, and pay to the Vendor the balance of the Holdback, if any, payable to the Vendor pursuant to *Schedule J [Payment Schedule]*;

- (c) the City may elect to reject all such Software or Services, in which case the City will be entitled to retain all of the Holdback then held by the City and the Vendor will be liable for all of the City's Losses that may be incurred by reason of the Vendor's default, and the City will have no obligation or liability following such termination and cancellation except with regard to confidentiality obligations which will survive such rejection of the Software; and
- (d) exercise any of its other rights at law or in equity in lieu of or in any combination with the above remedies.

22.3 Major Vendor Default

Despite any other term of this Contract, where the Vendor:

- (a) breaches *Section 16.2 [Protection of City's Proprietary Material]*;
- (b) wrongfully uses a disabling device within the Software in such a manner as to interrupt the City's use of the Software;
- (c) fails to preserve the City's legal rights to use the Software;
- (d) fails to comply with or fulfill its limited obligations under *Article 24 [Intellectual Property Protection]*; or
- (e) wrongfully terminates or attempts to terminate the Licence,

the Vendor's liability will not be limited as set out in *Article 21 [Indemnity and Liability]* and the Vendor will be liable for all Losses.

22.4 Default Remedies Limited

For further certainty, the City's remedies for Events of Default as outlined in this Article are subject to the Vendor's limitations on liability as set out in *Article 21 [Indemnity and Liability]*, except for any breach to which *Section 22.3 [Major Vendor Defaults]* applies.

ARTICLE 23 CITY DEFAULTS/DELAYS

23.1 Default of City's Obligations

If the City defaults in the observance or performance of any of its obligations under this Contract and provided always that the default is not an Intentional Fundamental Breach, then, despite any other term of this Contract, the following rules apply:

- (a) the Vendor will have no remedy in connection with such default unless the Vendor first gives the Director of Legal Services of the City written notice specifying the nature of the default, that the notice is given pursuant to this Article, and stating with precision what is required to be done to cure such default;
- (b) the City will have the following periods of time to cure such default without liability:
 - (i) ten (10) Business Days in the case of a default to pay money;
 - (ii) seven (7) Business Days in the case of a default that with reasonable diligence may be remedied within seven Business Days; and

- (iii) a reasonable period of time in the case of any default that with reasonable diligence would require more than seven (7) Business Days to remedy, provided that the City commences and proceeds continuously and diligently to remedy same;
- (c) in each case after receipt of such notice by the City's Director of Legal Services;
- (d) with respect to defaults other than a failure to pay money, if the City fails to cure such default within the required period, and the Vendor diligently attempts to mitigate the delays if any caused by such default, and, even with such mitigation, the default is such as to cause the Vendor to fail to meet the Implementation Schedule, then the following will apply:
 - (i) the Vendor will be allowed an extension of time equal to the period of time that the City was in default, plus any additional period required to accommodate the Vendor for the reasonable impact of the delay on the Vendor (the "City-Caused Delay");
 - (ii) the City will pay in addition to the Total Purchase Price an amount equal to interest at the 90-day LIBOR (London Inter-Bank Offered Rate) plus three percent per annum simple interest calculated monthly, prorated for any periods less than a full month, for the City-Caused Delay, calculated on such amounts which would otherwise have become due and payable at an earlier point in time under this Contract (but for further certainty excluding any and all delays in the receipt or timing of the Maintenance Costs);
 - (iii) any delay resulting from any Unavoidable Delay will not be considered a delay due to City default and no interest shall be charged to or be payable by the City for such delays; and
 - (iv) the City will have no further liability; and
- (e) with respect to any default in the payment of money other than as set out above, then the Vendor will not have any rights or remedies except that:
 - (i) if the amount is more than 30 days in arrears, then the Vendor will have the right to issue a written notice to the City's Director of Legal Services that unless payment in full with interest is made within ten (10) Business Days of such notice the Vendor will be entitled to submit the matter to arbitration pursuant to *Article 27 [Arbitration]* seeking that it be released from any further obligation to provide the Services, provided that the Vendor will not have the right to cancel the Licence or the Maintenance and Support Agreement (except for any breach by the City of its obligations under the Maintenance and Support Agreement which entitle the Vendor to terminate the Maintenance and Support Agreement) and the Vendor will have no further rights except to submit the matter to arbitration pursuant to *Article 27 [Arbitration]* for the recovery of the arrears with interest plus all reasonable legal costs and disbursements on an indemnity basis; and
 - (ii) the City will have no further liability and the Vendor will have no further remedies, except as may be ordered by the arbitrator.

23.2 Major City Default

- (a) *Intentional City Fundamental Breach (Non-Payment)* – Despite any other term of this Contract, where the City is in default of an obligation to pay money under this

Contract (but excluding obligations to pay money under the Maintenance and Support Agreement) and has not issued any written notice to the Vendor disputing its obligation to pay the amount invoiced by the Vendor and due and payable under the terms of this Contract (each an “**Intentional City Fundamental Breach**”), then the Vendor may give written notice of its intent to exercise its rights under this Section 23.2 and, if the City fails to pay the amount owing or to issue a written notice reasonably disputing the obligation to pay the invoiced amount within ten (10) Business Days of such notice, and the Vendor is subsequently found to be owed the amount referred to in such invoice, the City will be liable to pay interest to the Vendor at the rate of 20% per annum on the amount outstanding from the date due until it is paid in full and the Vendor will have the right, in its sole discretion and without affecting the obligation of the City to pay the amount that the City has failed to pay, to suspend the Services (or Maintenance Services, as applicable) until such time as such amount is paid with applicable interest.

- (b) *Intentional Fundamental Breach (Other)* – Despite any other term of this Contract, where the City breaches *Section 16.11 [Protection of Vendor’s Proprietary Rights]* and such default is the result of an error or omission which is neither intentional nor grossly negligent, the City’s liability for the Vendor’s Losses will be limited as set out in *Article 21 [Indemnity and Liability]*; however, where such a default is the result of an intentional or grossly negligent error or omission (each an “**Intentional City Fundamental Breach**”), the City’s liability will not be limited as set out in *Article 21 [Indemnity and Liability]* and the City will be liable for all Losses.
- (c) For the purposes of Section 23.2(b), “**intentional or grossly negligent**” means that the error or omission was consciously directed or permitted by an official, officer, director, or senior manager (including City Project Manager) of the City who knew or ought to have known that the error or omission was or could reasonably be expected to have caused such default.
- (d) *Intentional Fundamental Breach (Termination of Licence)* – Despite any other term of this Contract, where the City has committed an Intentional Fundamental Breach and it is not an isolated one-time default but is in the nature of a continuing Intentional Fundamental Breach, then the Vendor may apply to a court of competent jurisdiction for injunctive relief and may seek an order for the termination of the Licence as a supplemental or alternative remedy and where, after making such an application, the court makes the order sought by the Vendor and the City elects not to appeal or, the City or Vendor seeks to appeal and, after exhausting both parties’ rights of appeal, the City is ordered to cease its use of the Software under the Licence, then the Licence will be terminated.

23.3 Default Remedies Limited

For further certainty, the Vendor’s default remedies as outlined in this *Article 23 [City Defaults/Delays]* are subject to the City’s limitations on liability as set out in *Article 23 [Indemnity and Liability]*, except for any Intentional City Fundamental Breaches.

23.4 City Right to Suspend

Where the City is of the view (acting reasonably) that it needs to suspend the Project, it may do so from time to time on giving 30 days’ prior written notice (in this Article, “**Suspension Notice**”) of its intent to do so, provided always that any suspension may only be for a period up to six months (the “**Project Suspension Period**”). If the City issues a Suspension Notice, the parties will mutually agree, acting reasonably, on the adjustments to the Implementation Schedule and the Project Services fees necessitated by such suspension.

Upon issuing a Suspension Notice, the City will be liable to pay for all Project Services performed by the Vendor prior to receiving the Suspension Notice. All other amounts will remain payable on the same terms and conditions as before except deferred for the Project Suspension Period and except that the City will be liable to pay interest on such deferred amounts at the rate set out in paragraph (c)(iii) of *Section 23.1 [Default of City's Obligations]*.

23.5 Entire Liability of City

Except as expressly set out herein, this Article states the entire liability of the City and the sole remedies of the Vendor for any and all defaults under this Contract.

ARTICLE 24 INTELLECTUAL PROPERTY PROTECTION

24.1 Vendor to Assume Defence of Suits Against City

The Vendor will:

- (a) assume the defence of any suit brought against the City or any Affiliated Organization or Business Third Party to the extent it is based upon infringement of any Intellectual Property Rights arising from use or sale of the Software or any part thereof under this Contract or any current Release or modification of the Software supplied by the Vendor under the terms of this Contract;
- (b) pay all expenses associated with such defence;
- (c) indemnify and save harmless the City against any and all Losses incurred by the City as a result of such suits; and
- (d) subject to *Section 24.2 [Claim of Intellectual Property Infringement]*, immediately acquire the rights for the City to use the Software or part thereof or immediately provide the City with non-infringing Software components which will meet the terms of this Contract if the City is prevented from using the Software or any part thereof as a result of any suit or action taken against the City,

provided that:

- (e) the Vendor is given the sole and exclusive control of the defence suit and sole and exclusive control of negotiations relative to the settlement of it;
- (f) the Software or such part thereof is used by the City in the form, state or condition as delivered by the Vendor, or if it is not so used, such deviation is not the cause of the suit; and
- (g) the City provides the Vendor with written notice of the claim within 20 Business Days after the City's Director of Legal Services receives formal notice of the claim and cooperates with the Vendor in the defence of the suit and does not compromise or settle the suit without the prior written consent of the Vendor, such consent not to be unreasonably or arbitrarily withheld or delayed, and such infringement is not due solely to the combination of the Software with any third party software or hardware and such infringement is not caused by a modification to the Software created by the City or any third party on behalf of the City or such infringement does not result from any modification created by the Vendor at the request of the City pursuant to a Change Request that is not subsequently a Release.

24.2 Claim of Intellectual Property Infringement

If the Software or any part thereof which has not incurred any unauthorized modifications or combinations by the City is or becomes, or in the Vendor's opinion is likely to become, the subject of a claim of Intellectual Property infringement, then the City will permit the Vendor to, and the Vendor will promptly, at the Vendor's option and expense, either:

- (a) procure for the City the right to continue using the Software or such part thereof; or
- (b) replace or modify the Software or such part thereof with non-infringing Software or parts thereof that will meet the terms of this Contract.

24.3 Temporary Provision of Software

In the performance of the Services, either party may provide software to the other on a temporary basis. Both parties agree to the following with respect to the handling of the other's software (except for the Software and Third Party Software):

- (a) not to modify the software, except as permitted under the terms of this Contract;
- (b) to copy the software only as required for use on a processor under the control of either party or for archival purposes;
- (c) to use the software only as required for the applicable Service;
- (d) to confine the use of the software to the employees or agents of either party who require it for the Service;
- (e) to maintain, and disallow the removal of, any proprietary or copyright notices; and
- (f) to return the software to the other party upon the termination of the applicable Service and warrant in writing that all copies have been returned and that no further use will be made of them.

24.4 Limitation of Liability Does Not Apply

For greater certainty, the Vendor's limitations on liability as set out in ARTICLE 21 [Indemnity and Liability] do not apply to this Article.

ARTICLE 25 RECORDS

25.1 Full Audit Rights and Access

All financial accounts, records, invoices, receipts and vouchers of the Vendor will at all times be open to audit and inspection by the authorized representative of the City when and to the extent reasonably necessary to satisfy the City as to the Vendor's compliance with this Contract and the Vendor will supply the authorized representative of the City with all such information as it may from time to time require in connection with such audit and inspection. The Vendor will not, within a period of five years from termination or completion of this Contract, without the written consent of the City, dispose of any such accounts, records, invoices, receipts or vouchers but shall preserve and keep them available for audit and inspection at any time. The City will maintain, preserve and archive its records in the manner required under the Vancouver Charter.

**ARTICLE 26
COMPLIANCE WITH LAWS**

26.1 Vendor to Comply

In carrying out its obligations, the Vendor will familiarize itself and comply with all applicable laws, bylaws, regulations, ordinances, codes, specifications and requirements of all regulatory authorities, and will obtain all necessary licences, permits and registrations as may be required by law.

26.2 Vendor Will Pay and Discharge

The Vendor will pay and discharge all wages, fees, salaries, charges, costs and expenses due and accruing due to any of its employees, agents, suppliers and sub-vendors and will make and remit to the proper authorities all deductions required by law.

**ARTICLE 27
ARBITRATION**

27.1 Arbitration

Subject always to the City's and Vendor's rights and remedies expressly set out herein, any dispute under this Contract that is not resolved amicably by the parties following the expenditure of reasonable efforts to do so, will be referred to a single arbitrator under the provisions of the *Commercial Arbitration Act* (British Columbia) and the decision of that single arbitrator will be final and binding upon the parties. Except as may otherwise be agreed in writing between the parties:

- (a) the arbitration will be conducted in accordance with the procedural rules of the British Columbia International Commercial Arbitration Centre (in this Article, the "BCICAC");
- (b) the appointing authority will be the BCICAC;
- (c) the arbitration will be conducted in the English language in Vancouver, British Columbia; and
- (d) the costs of arbitration (other than the costs incurred by the parties for their respective legal representation in the proceedings) will be borne equally by the parties except where otherwise stipulated in this Contract.

27.2 Alternative if no BCICAC

If the BCICAC is not in operation at the relevant time, the appointing authority and rules governing procedure will be those of such similar entity as may be its successor. If no such entity exists, the appointing authority will be the Supreme Court of British Columbia and the rules governing procedure will be those last published by the BCICAC.

**ARTICLE 28
GENERAL PROVISIONS**

28.1 Permits and Licences

The Vendor will obtain and pay for all permits and licences required either by the federal government, provincial government, the City or any other authority to enable the Vendor to do all things necessary to perform its obligations under this Contract according to the provisions of the Contract Documents.

28.2 Non-Solicitation

If, during the term of the Project and for a period of 12 months afterwards, either the Vendor or the City (or their respective affiliates) contracts (whether by contract of employment, consulting service or other means) with an individual who was formerly an employee of the other party and who had performed activities or provided services in connection with this Contract, the hiring party will (unless the other party has waived in writing the provisions of this section) pay to the former employer six months salary (inclusive of all fringe benefits) at the employee's former rate of pay, on the date that the hiring party first contracts for services from that individual.

28.3 Vendor not Agent or Employee

Unless specifically agreed to in writing by the City, the Vendor will not be the employee or agent of the City and accordingly, will not purport to enter into any contract or subcontract on behalf of the City, or otherwise act on its behalf, and the Vendor acknowledges that the City will not be required on its behalf to make remittances, filings or payments required by statute of employers, and that the Vendor will not be entitled to the fringe benefits provided by the City to its employees.

28.4 No Assignment by Vendor Without Consent

Except as expressly permitted pursuant to *Article 19 [Sub-Contractors]*, the Vendor will not assign this Contract or subcontract to any person any right, duty or obligation under it without the prior written consent of the City which consent may be arbitrarily withheld, delayed or conditioned (except where and to the extent that the City is required not to withhold, delay or condition such consent pursuant to *Article 19 [Sub-Contractors]*) and any attempt to so assign or subcontract without such consent will be null and void and of no effect. Except as permitted pursuant to *Article 16 [Licence and Proprietary Materials]*, the City will not assign this Contract or the Licence and will not subcontract to any person any right, duty or obligation under it without the prior written consent of the Vendor which consent may not be unreasonably or arbitrarily withheld, delayed or conditioned. The Vendor will be deemed to be acting unreasonably if it withholds, delays or conditions its consent where the assignment is required by any Laws or Regulations including the *Vancouver Charter or Local Government Act*.

28.5 Compliance with Law

Neither party will be required, nor will it request or cause the other party, to do or fail to do any act or thing in contravention of any applicable rule, code or standard of professional ethics or conduct or in contravention of any applicable law

28.6 Non-Waiver of Rights

Any failure by either party to enforce or require the strict keeping and performance of any of the terms and conditions contained in the Contract will not constitute a waiver of such terms and conditions and will not affect or impair such terms and conditions in any way or such party's right at any time to avail itself of such remedies as that party may have for any breach or breaches of such terms and conditions, unless that party enters into and signs a Change Order or an Amendment.

28.7 Freedom of Information and Protection of Privacy Act (British Columbia)

The City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia). All documents submitted to the City become the property of the City, will be received and held in confidence by the City and the information will not be disclosed except to the extent necessary for carrying out the City's purposes or as required by law. Further to

Section 16.12 (a), all City Records are City's Proprietary Material and protected from disclosure or locating or giving access to them from outside Canada and the Vendor now confirms and acknowledges its obligations to comply with all obligations imposed on it pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia).

28.8 Terms of Contract Confidential

Except with the prior written consent of the other, each of the City and the Vendor will keep this Contract and its terms confidential subject to applicable laws and court orders.

28.9 Notice

All notices which are required to be given or made pursuant to the Contract will be given or made in writing and will be served personally (including by commercial courier) or sent by fax as follows:

(a) if to the City:

City of Vancouver
515 West 10th Avenue
Vancouver, BC

Attention: Director of Financial Services
Fax No.: (604) 871-6513

with copies to:

City of Vancouver
515 West 10th Avenue
Vancouver, BC

Attention: Director of Legal Services
Fax No.: (604) 873-7445

and:

City of Vancouver
City Hall, 3rd Floor
453 West 12th Avenue
Vancouver, BC

Attention: City Clerk
Fax No.: 604-873-7419

(b) if to the Vendor:

[•]
[•]

Attention: [•]
Fax No. [•]

or at such other addresses as each party may from time to time advise the other in writing. The date of receipt of any such notice will be deemed to be the date of delivery of such notice if served personally, or if sent by fax then the date and time of confirmation issued by the sender's fax machine as verified by the recipient's fax machine.

28.10 Changes in Laws and Regulations

If any Laws and Regulations applicable to the City require the City to act at variance with the terms of this Contract and the City so acts, then the same will not constitute a breach of this Contract (and the City now confirms that it is not aware of any Laws or Regulations that require the City to act at variance with the terms of this Contract), and the City's requirement to act at variance with this Contract will be deemed to be and will be treated as an Unavoidable Delay.

28.11 Severability—Enforceability Preserved

The invalidity of any portion of the Contract Documents will not affect the validity of the remainder of the Contract document and will be deemed to be severed provided that the spirit and intent of the Contract is not violated.

28.12 Survival

Any term or provision of these Contract Documents that, by its nature, is intended to survive the expiration or termination of this Agreement, including, obligations with respect to liability, indemnity, confidentiality, ownership and intellectual property, will survive the expiration or termination of this Agreement for any reason.

28.13 Contract Extension and Modification

The Contract may only be modified or extended by formal Change Order or Amendment of the Contract signed by the parties and made a permanent part of the Contract. Accordingly, and for further certainty, all Acceptance Test documents intended to constitute an Amendment must be signed by both parties in order to have that legal effect.

28.14 Unavoidable Delays

- (a) *Performance Deadlines Extended* – Except for the performance of obligations to pay money, time periods for the City's and the Vendor's performance under the Contract will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. Such extension will be deemed to include the ancillary reasonable impact which an Unavoidable Delay has on the delayed party such as for example where a key person is scheduled to perform Services or conduct/review an Acceptance Test result during the week that the Unavoidable Delay occurs but is thereafter not available again for 15 Business Days. However, under no circumstances will any "ancillary reasonable impact" delay extend beyond 15 Business Days and to the extent that it does then it will be conclusively deemed not to be an Unavoidable Delay.
- (b) *Unavoidable Delays* – An "**Unavoidable Delay**" means any circumstances beyond the reasonable control of the party trying to perform, and includes:
 - (i) strikes/lockouts, acts of God, terrorism, war or other strife or governmental action;
 - (ii) any delay resulting from defects or malfunctions of the City's Hardware and Software Platform;
 - (iii) any breach by a third party service provider responsible for the Hardware and Software Platform; and
 - (iv) the City acting at variance with the Contract pursuant to *Section 28.10 [Changes in Laws and Regulations]*;

- (v) but expressly excludes any and all delays caused by the Vendor's lack of financial resources or insolvency, or governmental action taken in the enforcement of law specifically against the Vendor, and as mentioned above any "reasonable impact delay" beyond 15 Business Days.

28.15 Time is of the Essence

Time is of the essence of this Contract and of the performance of each obligation of each party.

28.16 Publicity and Marketing

- (a) *No Commercial Use of Transaction or Relationship* – Without the prior written consent of the City, which the City may grant or withhold in its sole discretion, neither the Vendor nor the Vendor's affiliates, officers, directors, agents, representatives, shareholders, members, sub-consultants, suppliers or employees shall make any private, public or commercial use of their relationship to the City, including by contracting with or receiving money or anything of value from any person or commercial entity.
- (b) *No Promotion of Relationship* – The Vendor will not disclose or promote its relationship with the City or any of its Affiliated Organizations, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Vendor to perform the Vendor's obligations under the terms of this Contract). The Vendor undertakes not to use "City of Vancouver" or the official emblem, logo or mascot of the City of Vancouver or any other identification of the City as reference or means of promotion or publicity, without the express prior written consent of the City. Furthermore, the Vendor undertakes not to disclose or promote its relationship with the City in any communication or manner whatsoever as a basis to create an association, express or implied, between Vendor and the City. The City shall be the single point of contact for Vendor and its affiliates, officers, directors, agents, representatives, shareholders, members, sub-consultants, suppliers or employees with respect to submitting any proposed verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials.
- (c) *No Right to Permit Commercial Use of Transaction to Third Parties* – The Vendor shall have no right to grant commercial identification rights of any kind or description with respect to this Contract or the City to any supplier of goods or services or to any Sub-contractor, without the express prior written consent of the City, which consent the City may grant or withhold in its sole discretion.
- (d) *No Endorsement* – This Contract does not constitute an endorsement by the City of the Vendor's goods or services or of the Vendor's provision of services.
- (e) *No Future Commercial Advantages* – The Vendor agrees and acknowledges that:
 - (i) nothing in this Contract shall grant or shall be deemed to grant the Vendor any marketing, sponsorship or promotion right in connection with the City;
 - (ii) nothing in this Contract shall provide the Vendor with any right or advantage in securing any future marketing or sponsorship opportunity, and the Services or Maintenance Services performed hereunder or under any related agreement

shall not be deemed for any purpose an advance or other credit against any such future sponsorship rights fees payable to the City; and

- (iii) unless otherwise specified, nothing in this Contract shall impose or be deemed to impose upon the City any obligation to engage the Vendor to provide any future services required by the City or any services whatsoever other than the Services or the Maintenance Services.
- (f) **No Other Rights** – Nothing in this Contract or arising out of the transactions between the parties described in this Contract shall confer upon Vendor any right to acquire:
 - (i) licences with respect to any service marks, trademarks, trade names, trade secrets or other intellectual property, now or which may hereafter be associated with, owned by or licensed by the City;
 - (ii) any commercial identification; or
- (g) **No Licence to Marks** - No licence or right to use any present or future logo, emblem, mark, slogan, trademarks, service marks, copyrighted works, or other intellectual property of the City is granted to the Vendor by this Contract. The Vendor acknowledges that the City's trademarks, service marks, copyrighted materials and other intellectual property (including any emblem, sport pictogram and mascot) are protected by trademark, copyright and other laws, and may be used only with the prior written permission of the City.
- (h) **Indemnity** – Expressly subject to the limitations set out in *Article 21 [Indemnity and Liability]*, Vendor shall be liable for, and shall indemnify and hold harmless, the City from and against all claims, demands, actions causes of action, suits and proceedings and all loss, damage, cost and expense, including legal fees and disbursements, made or brought against, or suffered or incurred by the City and arising out of any breach by the Vendor of its obligations under this *Section 28.16 [Publicity and Marketing]*. The Vendor acknowledges that damages may be an inadequate remedy for any such breach, and further acknowledges that the City will be entitled to injunctive relief to prevent any breach or continuing breach of such paragraphs.

28.17 British Columbia Laws Govern

This Contract will be governed by and construed in accordance with the laws of British Columbia, which will be deemed to be the proper law of this Contract. The courts of British Columbia will have jurisdiction to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and will have jurisdiction to hear and determine all questions as to the validity, existence or enforceability of any clause. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the parties now irrevocably submit and attorn to the exclusive jurisdiction of the courts of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agrees to be bound by any judgment and not to seek, and now irrevocably waives, any review of its merits by the courts of any other jurisdiction.

28.18 Further Assurances

Each party will execute and deliver such further and other agreements, documents and instruments and do such further acts and things as are within its power and as may be necessary or desirable to fully implement and carry out the intent of this Contract.

28.19 Successors and Assigns

This Contract will enure to the benefit of and be binding upon each party and its respective successors and permitted assigns.

28.20 Entire Contract

The provisions contained and the documents referred to in the Contract Documents constitute the entire Contract between the parties and supersede all previous communications, representations and contracts whether verbal or written between the parties with respect to its subject matter.

28.21 Counterparts

This Contract and any other writing delivered pursuant hereto may be executed in any number of counterparts, including by facsimile or other electronic transmission, with the same effect as if both parties to this Contract or such other writing had signed the same document, and all counterparts will be construed together and constitute one and the same instrument.

AS EVIDENCE OF THEIR AGREEMENT to be bound by the above terms and conditions, the parties have each executed this Agreement as of the day and year first above written.

CITY OF VANCOUVER

by its authorized signatories:

Signature

Print Name and Title

Signature

Print Name and Title

[•]

by its authorized signatories:

Signature

Print Name and Title

Signature

Print Name and Title

SCHEDULE H

PERFORMANCE STANDARD WARRANTIES

1.0 WARRANTY

1.1 Proponents shall:

- (a) describe software warranty, maintenance, and support periods and terms, and extended term options, if any, and all such alternatives are to be separately listed with separate pricing in Schedule B [Pricing];
- (b) with respect to any software warranty, support or maintenance proposals (pursuant to (b) above) and with respect to all hardware and third party software components in the solution, **provide copies of actual hardware and software warranty, maintenance, and support agreements** so that the City can evaluate the actual proposed legal terms and conditions relating to matters including, without limitation, scope of coverage, length of warranty, exclusions and inclusions, parts, labour, response time/service guarantees, travel costs and transportation costs; and
- (c) ensure that pricing for all warranty, support, maintenance, extended term, and alternative options are clearly and separately set out in Schedule B [Pricing].

2.0 PERFORMANCE STANDARD WARRANTIES

- 2.1 Proponents are encouraged to fully describe the performance capabilities of the Software and Services offered by them.
- 2.2 For example, if the proposed Software has performance characteristics which are objectively verifiable for their overall reliability, speed, or any other relevant criterion, these should be stated in this Schedule with the intent that the statements in this Schedule will form the basis for contractually guaranteed service level targets and minimum service levels as further noted in Article 8 [Service Levels/Performance Guarantees].
- 2.3 The City prefers performance and service levels that are contractually guaranteed by the inclusion of specified rebates, discounts, and equitable compensation for any and all failures by the Proponent to deliver on such guaranteed measures. Accordingly, Proponents should describe all such rebates, discounts, and equitable compensation in this Schedule.

SCHEDULE I
ACCEPTANCE TESTS

Except as specifically noted in its Proposal, the Proponent(s) are to be fully responsible for the timely delivery and installation of all application software and all other system components supplied under the terms of the Proposal.

The Proponents will be required to provide at time of delivery, tests and test data which will allow the City to verify that the system functions in accordance with the Proposal and to a level acceptable to the City. These tests will not be to the same level of detail as the system and service acceptance Tests performed later in the implementation process, but should be of sufficient detail to prove that all processing functions included within the package are present, including occasional use functions such as those required for year end processing.

Due to the complexity of the applications, each functional module will undergo a rigorous acceptance test before being placed into production. Upon the successful completion of the acceptance test of the last functional module, a test of the full system (the “**System and/or Service Acceptance Test**”) will be conducted.

For greater clarity, final System acceptance will not occur until the System and/or Service Acceptance Tests are completed and satisfactory to the City. System and/or Service Acceptance Criteria will be developed based on the final configurations and options selected by the City.

The System and/or Service Acceptance Tests will include, but not be limited to:

- (a) integration test to confirm that the delivered software/service fully performs on the hardware and operating system configuration;
- (b) functional test to confirm that the delivered software/service meets the functional requirements agreed upon in the legal Form of Agreement;
- (c) performance test to confirm that the delivered software/service meets the performance and technical requirements agreed upon in the legal Form of Agreement;
- (d) all education and training has been completed to the satisfaction of the City;
- (e) documentation of a quality acceptable to the City has been delivered; and
- (f) where applicable, all hardware supplied under the Proposal functions according to the manufacturers’ specifications and the performance expectations as set out in the Proposal.